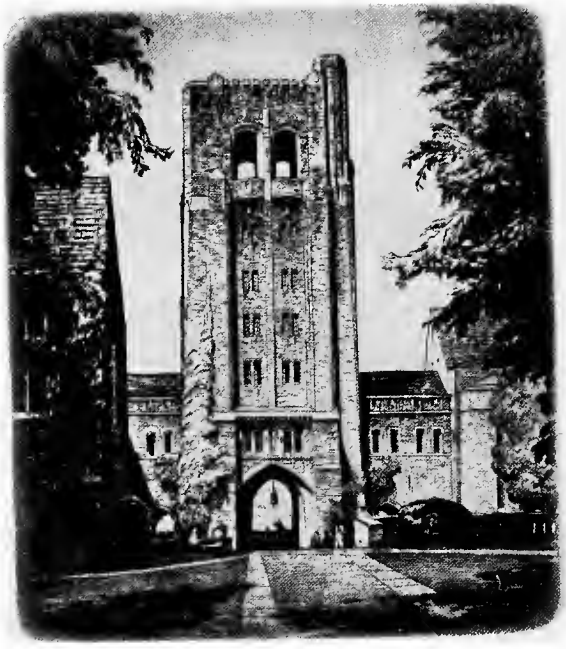

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PUNISHMENT AND REFORMATION

An Historical Sketch

OF THE

RISE OF THE PENITENTIARY SYSTEM

BY

FREDERICK HOWARD WINES, LL.D.

SPECIAL AGENT OF THE ELEVENTH UNITED STATES CENSUS ON CRIME, PAUPERISM, AND BENEVOLENCE; FORMERLY SECRETARY TO THE STATE COMMISSIONERS OF PUBLIC CHARITIES FOR THE STATE OF ILLINOIS, ETC.

As freedom advances, the severity of the penal law decreases

MONTESQUIEU

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FIFTH EDITION.

TO THE MEMORY

OF

My Father.

The history of punishment is perhaps the most curious part of the criminal law.

SIR JAMES STEPHEN.

There can be no more striking mark of the advance of European civilization than the transition from the dungeons and fetters of the Middle Ages to the penitentiaries of modern times.

SIR WILLIAM CRAWFORD.

The school of criminal jurists to which I belong has not deserted received opinions on light grounds, nor sought for new principles until the failure of the old ones for the production of good practical results had been demonstrated by centuries of experiment, varied until the wit of man had exhausted all the possibilities of permutation.

MATTHEW DAVENPORT HILL.

Conquer your foe by force, and you increase his enmity. Conquer by love, and you will reap no after-sorrow.

From the FO-SHO-HING-TSAN-KING.

PREFACE.

THIS book must be taken for what it is, not for what it does not claim to be. It does not pretend to be either original or exhaustive.

The author was requested to deliver a course of lectures, in 1893, before the students of the State University of Wisconsin, which were given extemporaneously; but afterward written, to be read, in January, 1895, before the Lowell Institute in Boston.

They have been rewritten for publication, in the hope that they may prove not only instructive but interesting. A great frivolous interest in crime is demonstrated by the attention paid to it in the daily journals; why not hope that a serious interest may also be taken in suggestions for its suppression?

This is not a book on prisons, much less on the organization and government of prisons. It is rather designed to be an aid to legislation and to the formation of a correct public opinion, which must in the end control legislation. Its aim is to give to the ordinary reader a clear and connected view of the change in the attitude of the law toward crime and criminals, during the century now drawing to its close, and of the honorable part which the United States has borne in the movement for a better recognition of the rights

even of convicted criminals. Looking to the future, the watchword should be: *nulla vestigia retrorsum.*

The authority for each statement in the text is not given in foot-notes, because of the great number of citations that would be necessary, and the consequent fatigue to the reader. The principal authorities consulted are: — "A History of the Criminal Law of England," by Sir James Stephen; "History of Crime in England," by Owen Pike; "Chronicles of Newgate," by Arthur Griffiths; "The State of Prisons in England and Wales," by John Howard; "The Punishment and Prevention of Crime," by Col. Sir Edmund F. DuCane; "Crime and its Causes," by William Douglas Morrison; "The Criminal," by Havelock Ellis; "Strafensystem und Gefängnisswesen in England," von Dr. P. F. Aschrott; "Lesebuch der Gefängnisskunde und Berücksichtigung der Kriminalstatistik und Kriminalpolitik," von K. Krohne; "Handbuch des Gefängnisswesens," (by various authors, but edited by Dr. Franz von Holtzendorff and Dr. Eugen von Jagemann); "Esprit des Lois," par Montesquieu; "Beccaria et le droit pénal," par M. César Cantu; "Mémoire sur les moyens de corriger les malfaiteurs et les fainéants," par Ch. Hippolyte Vilain XIIII; "Histoire de la législation," par M. le Comte de Pastoret; "Dictionnaire de la pénalité dans toutes les parties du monde connu," par M. B. Saint-Edme; "Les prisons de l'Europe," par MM. Alboize et A. Maquet; "Code des prisons," par M. Moreau-Christophe; "Du droit de punir," par Émile de Girardin; "Question des peines," par E. H. Michaux; "Sul governo e sulla riforma delle carceri in Italia," di Martino Beltrani-Scalia; and many more. It is im-

possible to mention by name the books, reports, documents, pamphlets, and journals which the author has read or examined, during the quarter of a century in which this subject has claimed more or less of his attention. Much of his acquaintance with it is derived, not from books, but from personal contact with prisons and prisoners. The books here named are histories or contain historical material; books on the theory of punishment have been omitted, also books by American authors.

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PUNISHMENT AND REFORMATION.

CHAPTER I.

THE QUESTION STATED.

Of all the perplexing questions which confront the statesman and the publicist, probably the most difficult of solution is that which relates to the proper treatment of crime and criminals. This is true, whether the question is approached from its theoretical or its practical side.

An enlightened criminal jurisprudence must rest upon principles which command the sanction of science and the approval of absolute justice; but these principles are not easy to find or to formulate. In practice it must satisfy certain obvious experimental tests. Does it insure the public peace and security, by reducing the volume of crime and the number of known, habitual offenders? Does it accomplish this result with due regard to the rights and interests of convicted criminals, as well as of the community which it seeks to protect? In other words, does it attain the maximum of efficiency without degenerating into oppression, and with the least possible infliction of pain or loss?

For a correct reply to these inquiries, patient historical research and exact statistical knowledge are essential.

Criminal law has been slowly and painfully evolved from human consciousness, in response to the varying historical exigencies of the race. The time has arrived when it must be judged by a higher criticism, which needs to be not merely retrospective and philosophical, but ethical and practical. Through what evolutionary stages has criminal jurisprudence already passed? What are its present tendencies? Are these tendencies such as to commend themselves to the ethical, political, and legal sense of mankind, in an advanced state of Christian civilization? The law is itself upon trial. A mass of evidence has been here accumulated, which must have an influence upon the verdict to be rendered by those who do the present volume the compliment to read it.

Our subject may be defined as the treatment of crime, for its repression and prevention; and of criminals, for their extirpation or rehabilitation; both in the past and in the present, with special reference to improved methods of treatment in the future. To this science, if it is a science, Francis Lieber has given the name of "penology," often confounded by type-setters in printing-offices with phrenology, to which it bears no relation. The term is an awkward one, as most technical terms are apt to be. Prison discipline, which the word is meant to include, is an art, rather than a science; but the termination of the word does not suggest any practical application of science. The Germans call this branch of human knowledge, from the scientific point of view, *Gefängnisswesen;* from that of art, *Gefängnisskunde.* In French, it is *la science pénitentiaire;* the mercurial Gauls have borrowed a phrase from the sedate Quakers of the commonwealth of William Penn.

Call it what we may, the theme which now engages our attention is remote from the ordinary experience, and to many it is repulsive. Rightly regarded, however, it is as interesting as it is important. If any apology is required for its presentation, it may be found in the following quotation from Victor Hugo: —

"The study of social infirmities and deformities, with a view to their cure, is a sacred duty. The mission of the historian of ideas and of morals is not less obligatory than that of the chronicler of events. The latter skims the surface of civilization. He registers royal marriages, the birth of princes, quarrels between kings, battles, convocations, the achievements of men illustrious for their public services, political revolutions. He describes the external aspect of events. But it is a deeper and more arduous task to penetrate beneath the surface; to lay bare the foundations on which the social structure has been reared; to tell of those who labor, who suffer, and who wait, — of womanhood staggering under burdens too heavy to be borne; of childhood in its young agony; of the silent secret conflicts which alienate men from their kind; of the obscure ferocities, the prejudices, the intrenched injustice, the subterranean reactions of law; of the hidden evolution of souls; of the formless shuddering of the masses of the starved, the half-clad, the disinherited, the fatherless, the unfortunate, and the infamous; of all the hobgoblins that wander in the dark. He who would lay bare the mysterious springs of human actions must descend — with a heart full at once of charity and of severity, as a brother and as a judge — into those impenetrable casemates where crawl in confusion those who bleed and those who strike, those who weep and those who curse, those who fast and those who devour, the wronged and their oppressors. Have these historians of the heart duties inferior to those which are laid upon the historians of the world's exterior life? Has Dante less to say than Machiavelli? Is the under-world of civilization, because it is deeper and more gloomy, less real and important than the upper? Can we know the mountain, if we know nothing of the caverns?"

The limits of penology are incapable of exact definition. It embraces portions of criminal jurisprudence. It covers everything which relates to prisons and prison discipline. It includes certain aspects of the work of the police, and of the institutional and other agencies by which preventive work is carried on in behalf of children and youth. It has points of contact with nearly every science and art which it is possible to name. It is related to medicine, through the connection which subsists between crime and insanity, and the necessity for a sound prison hygiene. The problem of criminal heredity creates a close affiliation between penology and biology. It is an essential and important branch of law, but it is no less intimately connected with government in the wide sense, or with politics regarded from the point of view of the statesman. It enters into the domain of philosophy and of religion. It has its ethical side. Prison discipline is, as we shall see, largely a question of pedagogics. The causes of crime require for their elucidation an adequate knowledge of political economy and of general sociological conditions. To demonstrate their operation the aid of statistics must be invoked; an art of extreme nicety and precision. The comparative study of crime implies familiarity with geography, anthropology, and history. The practical administration of prisons demands some acquaintance with architecture and engineering, with agriculture, with mechanics and manufactures, with trade and finance, and a deep insight into human nature, joined to experience in the government of men and natural aptitude for it. A competent warden needs to be thoroughly grounded in psychology. In short, all knowledge which has man for

its subject or object, and especially all philosophical inquiries which aim to explain human activity, individual or social, in its origin or in its outcome, lead up to the prison question. It is one of many doors through which one may enter the palace of Minerva. There is no social question at once so profound and so far-reaching, unless it be the labor question, with which the prison question is closely and vitally united.

There are two principal methods by which it may be studied — the philosophical and the historical. These are, however, so blended in practice as to be almost indistinguishable, except when the scalpel of the technical analyst divides them from each other upon the dissecting table in the chamber of speculative science, which is the chamber of death. The ideas and conduct of men are in life so inextricably interwoven, that the historic and the philosophic or logical order, in their parallel evolution, during the slow progress of the race from barbarism to civilization, are substantially the same. History needs to be read in the light of philosophy, and philosophy in the light of history, if we would form a distinct mental image of either — an image which will correspond to the real, and afford a clew to the ideal. The author of this little book will have succeeded in his aim, if on every page he succeeds in attaching to a historical fact, which is a picture, an explanatory legend in the form of a philosophical conclusion, and if he can induce the reader to turn from one to the other and back again in quick succession.

A brief outline of the scope and order of the topics included in the plan of the present volume will be an aid to the comprehension of the argument.

Two principal questions demand our attention: What is crime? and, What is the criminal? The notion of crime is not a fixed, but a variable, notion, growing out of local and temporary conditions, subject to perpetual modification in accordance with the political and religious conceptions peculiar to a given community in a given age. The criminal is the concrete expression of the abstract idea of crime. In his relations to the past, he is a product of antecedent causes, partly individual and partly social. In his relations to the present, he is an anti-social and disturbing element, a protest against existing social conditions and regulations, a menace to the public peace and safety, and in a greater or less degree a public enemy. In his relations to the future, he is a problem; whether soluble or insoluble, the future alone can determine.

These questions are separable only in thought. Since crime exists and can exist only in the criminal, the treatment of crime and that of the criminal are merely two phases of one and the same problem. Logically, however, the mind deals first with the question of the suppression of crime, then with the fate of the criminal, and his conversion or extirpation. This is also the historical order. It is only of late that the fate of the criminal himself has attracted public notice and interest.

There have been four distinct stages in the evolution of criminal law. The first was the era of vengeance, or retribution; the second, that of repression; the third, that of attempted reformation and rehabilitation; the fourth, of which we see as yet but the early dawn, is that of prevention. We shall see, as we proceed, how

these must have followed each other in the precise order here indicated.

It is of absorbing interest to trace the successive steps by which each of these conceptions of the function of criminal legislation has faded into that which immediately replaced it. The *lex talionis* was the original and barbarous foundation of the penal code. Retaliation, at first a private right, became, in the lapse of time, a public duty. The penalty of death, once the usual and all but universal form of vengeance, could be avoided by pecuniary compensation; and when the primitive State took into its own hands the regulation of such composition, the foundation of a true criminal jurisprudence was laid. The State and the Church then took upon themselves the task of suppressing crime by measures of severity, designed to intimidate would-be criminals by the terrors of torture, in all its hideous forms. This conception held humanity in its unrelenting grasp, not for centuries, but for thousands of years. Judicial and ecclesiastical murders were for ages regarded as the essential safeguard of social order and private security. Banishment was invented as a humane substitute for capital punishment. Prisons were merely places in which the accused awaited trial, or the condemned awaited execution. Beccaria gave the final blow which resulted in the overthrow of torture, and his influence is largely responsible for the gradual disuse and partial abolition of the death penalty.

John Howard pointed out how imprisonment might itself be made a legal penalty, and at the same time a means of reformation of law-breakers. These two reformers were contemporaries. The entire movement for

the amendment of the criminal law, and for the reform of prisons, is vitally connected with the growth of democratic ideas and institutions. It may almost be said to date from the American and the French Revolutions. It was greatly, and on the whole favorably, influenced by the discovery of Australia, and by the English experiments tried on that distant soil, under the system of transportation, which lasted for eighty years, before its failure was formally acknowledged. With the general acceptance throughout Christendom of imprisonment as practically the only secondary punishment, the criminal has become an object of attentive scientific study. The attempt to reform him has led to the invention of three systems of prison discipline; the Pennsylvania, the Auburn, and the Elmira. Penologists are divided into three camps, as they favor one or the other of these systems. The incomplete success of either has led many to doubt the efficiency of all methods which may be adopted for the renovation of the criminal character and impulses. Their persistence has led to new studies of the criminal, in his heredity and in his biological development, which have taken the name of criminology or criminal anthropology. But all are agreed that the principal hope of any material reduction in the volume of crime lies in its prevention, rather than in its cure. Society now seeks a better knowledge and more effectual enforcement of the laws of moral hygiene.

This record of slow but certain progress is the history of a movement in which the history of the human race is hidden at the core. It is the history of the steps by which the bonds of submission to external authority,

indispensable in the infancy of the race, but always liable to become arbitrary and despotic, have gradually been relaxed, as mankind has learned the lesson of self-control. It is a history which contains and is the embodiment of a prophecy. But the current of events has not flowed steadily onward without interruption. It has been a raging stream, dashing against rocky barriers, which have thrown it back upon itself; it has been filled with eddies and counter-currents. In the conflict with crime, society may be compared to a blind giant, dealing furious blows at an unseen but ever-present and irritating foe, sometimes hitting the mark, but, alas, too often missing it.

One central, dominating idea has characterized the entire movement, namely, that the world can only be rid of crime by ridding itself of the criminal; whether by killing him, sending him into exile, shutting him up in prison, intimidating and disabling him, or reforming him. The surest of all plans would be to stop the manufacture of criminals. This is the latest development of the war against crime. The modern police system is of more recent date than prison reform. Police surveillance of discharged convicts has been followed by suspension of sentence and surveillance without commitment to prison. Our institutions for the reformation of juvenile transgressors are an addition to the prison system, intended in large measure to supersede it. The principles and methods on which they are conducted have just begun to affect sensibly the organization and discipline of prisons for adults; they have given birth to the new reformatories for adult first offenders. They are largely supplemented by

purely preventive institutions for young children of both sexes, who are thus rescued from an environment favorable to the growth of criminal character.

Still more recently, the best authorities on child-saving tend to dispense, as far as possible, with all institution life for children, and to place them directly in private families, where they will receive the benefit of a home, and their surroundings will be more nearly assimilated to those of other children.

If the centuries before Christ and the first eighteen centuries of the Christian era furnish the dark background, against which the beauty that resides in the salvation of the lost and the rescue of the perishing stands more sharply revealed, on the other hand it may be said that the benevolent work of the nineteenth century, throughout the world, is the outward and visible reaction against the barbarity and brutality which, before this century opened, everywhere characterized the administration of the criminal law. The flower of Christian charity has sprung up and blossomed from roots which struck deep into what seemed to be the most unpromising of soils, but which has been enriched by the blood of numberless victims, and watered by the tears of the pitiful.

CHAPTER II.

WHAT IS CRIME?

Crime needs to be sharply discriminated from vice on the one hand, and from sin on the other. Vices are injuries done to oneself, through the violation of natural law, which affect others only indirectly, if at all. Intemperance is a vice; so is sloth, so is improvidence. Sins are offences against God, whose commandments extend beyond outward acts and reach down into the region of unuttered thoughts and unfulfilled desires, of which human legislation can rightfully take no cognizance. Crimes are wrongful actions, violations of the rights of other men, injuries done to individuals or to society, against which there is a legal prohibition enforced by some appropriate legal penalty.

The distinction just made is real, but these categories of wrong-doing are not necessarily mutually exclusive. There are vices and crimes which are also sins. And any vice or sin becomes a crime when it is declared to be punishable by human law.

Again, actions or omissions contrary to equity, for which the legal remedies are merely civil, and consist in restitution, with or without damages, must be discriminated from actions or omissions in which the disregard shown for the rights of others is so palpably immoral and anti-social as to call for the infliction of some degree of criminal punishment, either by deprivation of life,

liberty, or property. Only the latter fall within the strict definition of crimes in the technical phraseology of the law; the former are torts.

Sir James Stephen says: —

"The criminal law is that part of the law which relates to the definition and punishment of acts or omissions which are punished as being —

(1) Attacks upon public order, internal or external; or
(2) Abuses and obstructions of public authority; or
(3) Acts injurious to the public in general; or
(4) Attacks upon the persons of individuals, or upon rights annexed to their persons; or
(5) Attacks upon the property of individuals, or upon rights connected with and similar to rights of property."

To this succinct description of the criminal law he adds: —

"The conditions of criminality consist partly of positive conditions, some of which enter more or less into the definition of nearly all offences; the most important being malice, fraud, negligence, knowledge, intention, will. There are also negative conditions or exceptions tacitly assumed in all definitions of crimes, which may be described collectively as matter of excuse."

Crimes are distinguished as felonies or misdemeanors. By the common law of England, felonies were punishable with death. In the penal codes of the United States, the distinction between a felony and a misdemeanor is mainly statutory, and has lost its original significance. The graver offences are felonies. Felonies are punishable by death or imprisonment in a state prison or penitentiary for a term of years; an offence thus punishable is a felony. Misdemeanors are punishable in a minor prison for a term of months or

days; an offence thus punishable is a misdemeanor. A finer example of reasoning in a circle cannot well be imagined. The distinction is purely artificial and arbitrary.

The French criminal code makes a somewhat similar and equally irrational, but still more complicated, subdivision of crimes into three grades: (1) Contraventions; (2) delicts; (3) crimes. Contraventions are violations of police regulations. The penalties for delicts are correctional; for crimes they are afflictive or infamous, or both.

For the purpose of this argument, the one important fact to understand and remember is that nothing is a crime, which the law does not so regard and punish. Paul, who was as learned in the law as he was indefatigable in his missionary zeal, quaintly expresses this truth, in saying to the Romans: "Without the law, sin is dead. For I was alive without the law once; but when the commandment came, sin revived, and I died."

The origin of law is shrouded in the mists of antiquity. There must have been a time when there was no law, in the sense of legal enactment, for mankind, any more than there is for the brute creation. The passions of men exploded at the touch of conscious wrong, as a dog snarls and bites when another dog attempts to take away the bone which he is crunching under his teeth. No other mode of self-defence was known or practicable. There was a time when the idea of the State was foreign to human thought. Before the organization of the State, all wrongs fell into the category of torts, that is, purely civil injuries, or of sins, that is, insults to the majesty of the gods. Crimes are

acts of disobedience to the state. Where there is no State, there can be no crime.

The sense of wrong must have preceded the sense of right in the individual and common consciousness. We now look upon wrong as the negation of right; but it seems probable that to the primitive man wrong was something positive, and that the notion of rights was slowly evolved, through the instinctive opposition felt to successive and repeated injuries. In Sir Henry Maine's opinion, "It is hazardous to pronounce that the childhood of nations is always a period of ungoverned violence." Nevertheless, the natural state of man without law is one of private and tribal war. Where there is no conflict, no struggle for existence, there is no life. Law is an attempt to regulate this struggle among men upon equitable principles and in the interest of the greatest number. In the primeval state of mankind the struggle was unregulated. The sole measure of the atrocity of an injury was the degree of the passionate reaction which it aroused. Self-defence and the redress of injuries were the affair of the individuals directly affected. The steps by which private war was abolished, crimes legally defined, and their punishment relegated to the judiciary will be recounted in a subsequent chapter.

The definition of crimes has varied from age to age, especially in different states or nations. Offences which are punishable by law may or may not be contrary to morals. Much confusion of thought has been occasioned by the failure to recognize this double sense of the word crime. A corresponding uncertainty attaches to the meaning of the word criminal in the mouth of any one not a lawyer.

Among the crimes of a superstitious age, offences against the prevailing religion occupied a prominent place. The ecclesiastical spirit finds its freest scope among the ignorant; and with savages, the priest is everywhere a personage of consequence, clothed with supernatural power and endued with authority derived directly from the gods. He bows before none but the king, and not always before him. The relation of the priesthood to the throne, whether in a theocracy or in a modern State, where the king is supposed to rule by divine right, and the right to reign is conferred with appropriate ceremonies by the Church, is such as unduly to exalt the ecclesiastical authority. If political power in civil government is derived from the consent of any ecclesiastical prince or hierarchy, then the right of the Church to define and to punish ecclesiastical offences, either by its own courts or by those of the civil power, cannot logically be denied. The Church has always claimed this right, and where the separation between Church and State is not absolute and complete, it must be conceded. The common ecclesiastical offences are heresy, sacrilege, sorcery, witchcraft and enchantments, blasphemy, perjury, and Sabbath-breaking. Everywhere the heretic is one who differs in opinion from the religious party in power. Heresy in one place is orthodoxy in another, and the definition of orthodoxy changes with every alteration in popular beliefs. The Egyptians punished with death any one who should reveal the burial-place of the sacred bull, Apis, or who should even by accident cause the death of a vulture, a cat, or an ichneumon. At Athens sentence of banishment from Attica was pronounced against

the profane individual who should pluck a leaf from the trees consecrated to Minerva. It was there regarded as sacrilege to kill a bird consecrated to Esculapius. The early Christians were thrown to wild beasts, crucified, and burned alive by the Roman emperors. In the Middle Ages, the Catholic church persecuted Protestants with fire and sword. The Protestants made similar abuse of power when fortune had placed it in their hands. Even the Puritans of Massachusetts banished Roger Williams, though he was himself a Puritan. The ecclesiastical courts of England, until the year 1640, had the right to punish offences against religion and morals; in other words, to punish sin as such, particularly offences arising out of the relation of sex, including every form of incontinence. This right still exists as to incest, which is not a secular crime by English law. The Court of High Commission, which was a sort of Protestant Inquisition, was authorized to enforce ecclesiastical conformity upon all persons, lay or clerical. The decrees of the ecclesiastical courts were enforced by excommunication and penance. The greater excommunication entailed a variety of civil incapacities; an excommunicated person could not sue, nor testify as a witness, nor come into the possession of an inheritance. They also had power to impose heavy fines, and to commit offenders to prison, though not to inflict torture or the penalty of death.

The list of obsolete crimes is a long one. Possibly the most illustrious is that of lese-majesty. *Laesa majestas*, under the Roman law, included pretty much every form of derogation from the dignity of the Emperor, or, in the days of the Republic, of the people.

By the law of the Twelve Tables, it was punished by flogging to death. In England a law of Henry VIII. pronounced any one guilty of this offence who should predict the death of the king; and, the prince having been seized with an illness, his physicians dared not say that his life was in danger.

Sumptuary laws furnish another illustration. The law no longer attempts to prescribe what men shall eat or wear, the number of invited guests who may lawfully sit at the table of their host, the number of courses which may be served at a dinner, or the character and cost of the ornamentation which may enter into the building of a house. In Russia, in Turkey, and in Persia — by a grand duke, by a sultan, and by a shah — the use of tobacco has been prohibited, under penalty of having the nose slit or cut off, and even of death.

So, too, of legislation governing trade and commerce. Forestalling, regrating, and engrossing are now almost forgotten crimes. Yet it is barely fifty years since the political economists succeeded in wiping them off the English statute-books. To forestall was to buy goods or provisions on their way to market, with the purpose of enhancing the price or diminishing the supply. To regrate was to buy in the marketplace, in order there to sell again at a higher rate. To engross was to buy grain standing, or generally to buy up sundry kinds of provisions with the intention of selling again. The penalties against these acts were designed to cheapen the cost of living, by reducing the number of middlemen. In the reign of Edward IV. the sale of coin to a foreigner was a felony. Under Lysander, the Lacedæ-

monians put to death any citizen found to have gold in his house.

Resistance to innovation has often sought ineffectually to place legal barriers in the pathway of human progress. Driving with reins was once a crime in Russia, the immemorial custom having been for the driver to ride or run by the horse's side. The German printers who first brought printed books to Paris were condemned to be burned alive as sorcerers, and only escaped death by flight. Francis I., in 1635, forbade the printing of any book in France, upon pain of the gallows. The fate of Galileo needs only an allusion here. The medical doctrine of the circulation of the blood has also been the object of prohibitory legislation.

Curious instances of absurd criminal laws might be given at tedious length. The Ionians passed a law exiling all men who were never seen to laugh. The Carthaginians killed their generals when they lost a battle. Pliny relates that they condemned Hanno for having tamed a lion, because a man who could tame a lion was dangerous to the liberties of the people. In ancient Rome play-actors were deprived of citizenship. By the Julian law celibacy was a crime. In Sparta confirmed bachelors were stripped in midwinter and publicly scourged in the market-place.

On the other hand, modern civilization has created a formidable catalogue of crimes unknown to former generations. All changes in social organization, in customs, in political control, and in religious beliefs import changes in the criminal law as their consequence; because what is overthrown must be prohibited, and the new needs to be fortified and protected by legal

sanction. But the chief source of the additions to the code which have been made in the present century is found in the altered conditions of manufactures and trade, growing out of recent scientific discoveries and their application by inventors to the arts. The business of the world as now conducted requires the protection of the law in all its parts. There are, accordingly, penalties pronounced against interference with the new modes of transportation by steam and electricity; penalties against infringements upon the rights of patentees; penalties against the abuse of power by corporations; penalties against illegal combinations by the employed, and against doubtful methods adopted by them for gaining a victory over their employers, or over their competitors in the labor market; penalties against the malicious and wrongful use of new and destructive chemical compounds, such as dynamite; penalties against the criminal neglect of the rights and safety of workingmen in factories and in mines. The entire body of sanitary law is for the most part new; it is measurably due to the rapid growth of towns and the concentration of population under conditions unfavorable to health, where pestilence is easily bred, if proper precautions are not taken for the destruction of the germs of disease. With improved facilities for travel and an ever increasing number of travellers, the system of quarantine has assumed new importance and has been greatly perfected. Other illustrations of the necessary enlargement of the criminal code, the result of the revolutions which have taken place in modern social life, will occur to every reader.

History, from the sociological point of view, is an account of the variations which have taken place in

human relations. Among these relations may be mentioned, by way of illustration, the relation of the sexes; the relation of individuals and communities to the soil; the relations of rank, precedence, and subordination; the relations of capital and labor; corporate relations; government relations; and the like. Such relations exist wherever men are found. But they differ indefinitely in detail and combination, according to local and temporary conditions, especially according to the position of tribes and nations in the scale of civilization. The history of crime and punishment is an index, more or less complete, to these historical changes in social and political organization. It is a reflection in miniature of general history, a convenient and comprehensive introduction to the study of sociology.

The relation of the sexes is the fundamental human relation. The laws which regulate it vary, according as monogamy, polygamy, polyandry, or some other system of permanent or temporary marriage is approved by the prevailing local sentiment, on the ground of its supposed social utility. These laws will be more or less rigidly enforced, as the necessity for the preservation of the institutions of marriage and the family are more or less highly appreciated. The toleration of competing forms of sexual relation is a sure sign of lack of respect for marriage; and a wide gulf separates the social condition of a people among whom inquiry into the paternity of an illegitimate child is forbidden, from that of another people whose laws render such inquiry obligatory.

A circumstance which must exert a controlling influence over all social and political institutions is the

mode by which the members of any given community are attached to the soil. There can have been originally no property in land; it was what the Roman lawyers called *res nullius,* a thing without an owner, like the air. The first ownership must have been tribal or communal, and could have had no other basis than occupation. When the Israelites took possession of Canaan, they subdivided the conquered territory, not by individuals or families, but by tribes. Where warring tribes contended for possession, as the herdsmen of Lot did with those of Abraham, the only alternative, unless the strife could be settled by an amicable agreement, was an appeal to the law of might. The allotment of parcels of ground to families or individuals, for their temporary or permanent use, was an afterthought. The lands so allotted were at first arable lands only; large tracts still were owned in common, like the German *marks.* Proprietorship in land has assumed different forms in different countries, at different times. It has been governed by different rules, in a nomadic state, under the feudal system, and in modern times. Persons not land-owners, like the English *villeins,* or the *metayer* tenantry of Southern Europe, or the Russian serfs, or our own African slaves, have nevertheless held certain defined relations to the lands cultivated by them, both in the nature of rights and obligations. Instances of communal ownership are still to be observed in the Russian *mir* and in the village communities of India. Of course these landed rights have been protected by appropriate legislation enforced by penalties, which must have varied, and still vary, with the differences in the nature of the tenure by which land is held.

The relations created by the legal recognition of rank could only be maintained by privileges and penalties, which tend to disappear, even in their surviving rudimentary forms, in a democratic age.

How far is crime justifiable or excusable, when two parties agree and consent to its perpetration; for example, in illicit relations between the sexes? or in gaming, which is a form of robbery? or in the duel, which is a form of murder? The attitude of the criminal law has varied indefinitely as to offences of this description, as public opinion has tolerated or condemned these quasi contracts to abide by the issue of an immoral action. At the present moment the public conscience is grappling with the question of the legitimacy of that form of financial speculation which consists in dealing in futures and in options. The suppression of the Louisiana lottery was a task beyond the ability of the people of that State; it could not be accomplished without federal aid. The change in public sentiment which has taken place since the State of New York thought it expedient to sanction a public lottery by law, as an aid to public education, has made a crime of what was once regarded as a virtuous and patriotic action.

Slavery is the child of war. The first slaves were military captives. It has been said that the institution of slavery, by putting an end to the practice of massacring prisoners in mass, was the first and greatest single step in the evolution of civilization. Slavery was originally profitable. So long as it continued to be profitable, it was protected by law. But the experience of all nations in which it has found a foothold —

and there are few which can show a clean record in this regard — proves that everywhere its ultimate tendency has been to destroy the nation which has tolerated it. Whenever this has become apparent, the law has overthrown it, often at the end of a bloody struggle.

The time may yet come when war itself may be branded as a crime; but if so, it will not be until the destruction of life and property which it involves is felt to be too great to be longer endured, for the sake of any incidental advantage which may grow out of it.

In a word, crime is a variable quantity. It is the product of the aggregate social condition and tendencies of a people at a given moment in its history. Actions which in one age are regarded as heroic, and which have elevated their authors to the rank of the gods, in another bring the same daring spirits to a dungeon or the gibbet. The connection between law and ethics is not nearly so close as is commonly imagined. In law nothing is wrong which the law itself does not forbid. Precedent and prejudice wage perpetual war with progress. The conservative instincts of the race, which are allied to authority in Church and State, in the form of established governmental institutions, oppose the radical and revolutionary tendencies of the political and social innovators whose respect for the past is limited by the intensity of their aspirations for the future. That which is permanent and abiding in human nature constitutes its larger part; but there is enough that is evanescent to impart a transitory character to many alleged crimes and many forms of punishment. Progress has been attended by one constant effort to throw off oppression — religious, political, legal, and military;

to find room for the exercise and development of individual tastes and capacities. The determination to conquer personal freedom has been indomitable, and it has furnished many martyrs, whom tyrants have branded as criminals.

These observations have a distinct bearing upon the question, much discussed of late, whether crime is a disease. Since what is crime in one age is no crime in another, then, if crime is a disease, disease in one age may be health in another. Where heresy is regarded as a crime, the heretic must, upon that theory, be a person whose physical and mental constitution are more or less abnormal. Christians might be regarded as suffering from disease, or at least as constituting an anthropological type, in Arabia; and Mussulmans must be similarly regarded throughout Christendom. The importance of a distinct understanding of terms, before we enter upon the discussion of biological theories of crime, is thus apparent.

Crime is not a character which attaches to an individual. It is not a simple phenomenon of ethical aberration from a standard type. It is rather a complex relation, which the law creates between itself and the law-breaker. The law creates crime. It therefore creates the criminal, because crime cannot be said to exist apart from the criminal. The criminal is a man who puts himself in an attitude of antagonism to the law. We are discussing here, not the ethical rights and obligations of men in association with each other, but their legal rights and responsibilities. We are discussing, not what ought to be, but what is; and one object of this book is to show how the law has treated what the law has declared to be a crime.

CHAPTER III.

RETRIBUTION FOR CRIME.

In dealing with crime and criminals, society may proceed upon either of four principles. It may inflict vengeance upon the culprit, as an act of justice, because he merits punishment. Or it may have recourse to severe penalties, not from any vindictive motive, but with a view to intimidate the guilty and to deter others from imitating their bad example. Or it may aim at the reformation and rehabilitation of the offender. Or, finally, it may attempt to prevent the commission of crime, by vigilance, by the moral training of the young, and especially by devising practical checks to the operation of the causes which are known to swell the aggregate of criminality. These four methods are not mutually exclusive. Historically, however, each of them has been made prominent, in the order of succession in which they have here been named: retribution, repression, reformation, prevention.

The primitive man knew nothing of law. There was no law in the garden of Eden, except the divine injunction not to eat of the tree of the knowledge of good and evil. How, then, was social order maintained?

The generally accepted theory of primeval social organization is that it was by families. In other words, it was patriarchal. So it is represented in that ancient

record, the book of Genesis. The histories of the families of Abraham, Isaac, and Jacob are not unlike instances which might be cited from other nations of antiquity. The power of control was vested in the father of the household — the *patria potestas*, as it is termed in Roman law. This power was so great, that it extended even to life and death. It was no less absolute over children than over slaves. The original social unit was not the individual, but the family. The title of the family to property — to flocks and herds, to servants, to growing or harvested crops, to such rude money as then circulated for purposes of exchange, to the imperfect tools and implements of peace and war — was vested in the patriarch; in a representative capacity, perhaps, but without any actual restriction upon his discretionary right to dispose of it at his will. He rendered judgment, and from his decision there was no appeal.

Out of the family grew the tribe. When the family became overgrown, there was but one remedy for the inconveniences which resulted from such overgrowth, namely, separation — amicable division. So Lot separated from Abraham. So, after the death of Jacob, the children of Israel grouped themselves according to the nearness of their blood relationship, by tribes. A similar organization was that of the Scottish nation, by clans.

All this is so familiar to the intelligent reader, that it need not be enlarged upon here. It would be foreign to our present purpose to point out the steps by which tribes became united and blended, so as to form inchoate nations, which grew into complete statehood by

impulses from within and shocks from without.[1] What concerns us now is to note the original supernatural sanction for the authority vested in the father of a family or a tribal chieftain. The primitive form of religious belief, though it was not and could not be formulated, must have been really pantheistic. The superstitious savage sees in every movement of natural objects the visible manifestation of the power of an indwelling spirit. Spirits move the sun, the moon, and the stars across the sky; spirits make the leaves and the grass to wave, and water to ripple, in the wind; spirits make the flame and the smoke to rise, and the rain to fall; spirits are in the growing plants, in the rushing rivers, in the flash of lightning, and the roar of thunder. What more natural than that they should suppose that spirits suggested the thoughts of men? Especially did they believe this of the most powerful of all men, the patriarch. They had no rules by which to order their actions in advance. They simply followed their natural instincts, and the head of the family or of the tribe pronounced *ex post facto* judgment upon them. His judgment, whatever it might be, was a divine judgment, dictated to him by the gods. Homer calls these inspired utterances *themistes*, for this precise reason. It seems hardly necessary to allude, by way of confirmation, to the well-known practice of the early kings of Greece, who were in the habit of consult-

[1] The deep pulsations of the world,
Æonian music measuring out
The steps of Time — the shocks of Chance —
The blows of Death.

TENNYSON.

ing the oracles, particularly the oracle at Delphos, before rendering judgment; or to the Roman augurs.

Nevertheless, every judgment pronounced formed a precedent. The body of such precedents gradually acquired some measure of consistency. They were remembered and anticipated. Thus grew up customs, which were the prepotency and promise of laws to come, when the invention of letters should enable men to supplement and supplant tradition by written records. Then usages would become fixed, and the maxims in which they were embodied could be collected and combined in the form of codes.

This is precisely what happened. It would not be strictly accurate to call the decalogue a code, since the commandments have no penalties attached to them. But the Twelve Tables of the Romans, which are very fully described in Stephen's History of the Criminal Law, form an ancient and admirable example of a code. All the offences known to early Roman law are there listed, and the penalty for each of them is stated with precision. Still, we see in those tables only the dawn of legislation. The legislative function began to be imperfectly discriminated from the executive in government. The night of superstition began to flee with reluctant, hesitating step, before the rising light of reason. The genius of Rome was not yet able to distinguish sharply crimes from torts, or to cover the ground which a penal code ought to cover, or to measure guilt and penalty, and adjust them to each other with any approach to a correct estimate of either. Neither had the human intellect yet grasped the conception of the difference between legislative and judicial functions.

The origin of courts is very obscure. Ninus, the founder of the Assyrian empire and the builder of Nineveh, is said to have instituted, in almost prehistoric times, regular and orderly tribunals — one for the trial and punishment of murder, another of theft, and a third of adultery. Whether this be true or false, something like it is discoverable in Roman history. The first courts were merely committees of the legislature, to which the duty was intrusted of making certain investigations and decisions with reference to matters referred to them. They were called *quæstiones*, or inquests. Human nature and human needs do not vary, except within tolerably narrow limits; and it might easily happen that some such division of crimes to be inquired into took place in Rome as that credited to Persia. Such inquests, at first temporary in their jurisdiction, naturally tended to become permanent, as their utility was recognized, and to acquire an authority more or less independent of that by which they were created.

It is curious to observe how the steps in the process of growth of jurisprudence just described with so much brevity, and yet, it is hoped, with sufficient accuracy and clearness, correspond to the Spencerian formula of evolution. Von Baehr, the great German naturalist, observed that the growth of the egg is marked by a change from a state of simplicity or homogeneity to one of complexity or heterogeneity. This was Herbert Spencer's starting point. He added that, along with the change from simplicity to complexity, may also be observed a counterchange from indefiniteness to definiteness, and from incoherence to coherence. Von Baehr had noticed that the change is one of differenti-

ation. Spencer added that it is also one of integration. In other words, Von Baehr called attention to the analytic aspects of the change, but Spencer to its synthetic aspects. Accordingly he defined evolution, which is but another word for growth, as "a continuous change from indefinite, incoherent homogeneity to definite, coherent heterogeneity, through successive differentiations and integrations." This formula, which is as simple as it is symmetrical, applies, so far as we can yet see, to all living organisms; and to the extent that human society is a living, organic thing, capable of growth and development, all history unfolds in accordance with it.

Let us apply it to what has thus far been said about the history of government and of law. The union of all governmental functions in one person, the person of the patriarch, was certainly the acme of simplicity and homogeneity; but it lacked nothing so much as definition. The breaking-up of the family into tribes was a process of disintegration, and the more perfect union of the tribes under the form of a state was an act of integration. By the joint and successive operation of these two processes, the vague and ill-defined power residing in the family or tribal chief continually tended, through analysis, to become more definite; to reveal itself at first as separable into two, the executive and the legislative, but later into three, the executive, legislative, and judicial functions. The conception of crime became correspondingly more definite, and at the same time that of penalty also. The system of legislation and of administration became steadily more complicated and yet more consistent. In proportion as we compre-

hend and retain in our minds this history, the meaning of the formula becomes plain; and *vice versâ*. History, read in this light, ceases to be a chronicle of events, like a catalogue of words in a dictionary, bearing no organic relation to each other. We begin to see the beauty of the providential purpose which unites and regulates it, so that its varied parts form a distinct pattern, which it is possible to trace out and remember. Besides, the direction of the lines which we have followed to their termination in the present must be the same in the undiscovered future; and so we are able to forecast the ways which progress must take, if the unity of history, which is the unity of truth, is not to be violated, as we know that it cannot be.

But this is a digression. To return to the thread of our story, let us revert to the remark already made, that the primitive state of mankind must have been one of war, both individual and tribal. In the absence of law, there was no way to settle disputes but by the arbitrament of force. To defend one's conception of right, at any risk, was regarded as highly moral; to refuse to do so as an immoral act. The fundamental principle of morality is reciprocity. I must give an equivalent for what I get. My neighbor has no right to take from me that for which he does not render an equivalent. If one term of the equation is a minus quantity, the other must be. The primitive man could not see why, if we are to return benefits, we are not to return injuries, upon the same basis of give and take. Accordingly, the instinct of retaliation is one of the deepest instincts in human nature; it survives even in the civilized man. Where there is no possibility of

obtaining satisfaction or indemnity without violence, violence no longer presents itself to the imagination as an act of vengeance, but of self-defence. The *lex talionis*, therefore, is the most ancient of all laws. When Cain had killed his brother, he realized in an instant, (with no experience to give his thought the form which it assumed), that every man who saw the blood upon his hands would seek his life in Abel's name; and God set a mark upon him for his protection — which the apologists for capital punishment upon religious grounds can explain as they are best able. There is no reason to accept the theory of some scholars that the *lex talionis* originated in Egypt. Rhadamanthus, the wise, just, and (for his age) humane lawgiver of Crete, whom the ancients held in such estimation that the mythologists made him a judge in the lower world, is said to have introduced it into Crete. But it is as old as human nature, as universal as mankind, and as enduring as this present evil world. It was never better stated than in the Mosaic law: "Thou shalt give life for life, eye for eye, tooth for tooth, foot for foot, burning for burning, wound for wound, and stripe for stripe."

I have too sincere an admiration for Moses (who must, I think, be admitted to be the greatest man of all ages, in view of what he did as a lawgiver, not for the Jews only, but for all nations as well), to let this quotation pass without a single apologetic remark, little as Moses needs defence. To be sure, the milder and gentler spirit of the gospel shines by contrast in our Lord's doctrine of non-resistance, which, however, men are not disposed to accept in its literal fulness. Moses

is expressly said to have tolerated divorce on account of the hardness of heart of his contemporaries. In the same way he tolerated retaliation for injuries, but sought to restrain the vengeful impulses of men by limiting the degree of reciprocal injury to an exact equivalent; an eye for an eye, but no more — not one wound or stripe in excess of the exact tale of indebtedness. He recognizes and enjoins upon the wrong-doer the sacred obligation to render satisfaction to the party injured, but, with Portia, cries to the latter: —

> "Shed thou no blood; nor cut thou less, nor more,
> But just a pound of flesh."

Given these two conditions — the family or tribe as the social unit, and the right and duty of retaliation supposed to be an ethical axiom — and there could be no avoidance on the part of all the members of a family or tribe to take part in the quarrel of every injured member. Organized revenge became a social institution, under the title of the "blood-feud." In a rudimentary form, ever tending to become obsolete, this institution survives in our own country, at the South, where the vendetta is more dreaded than a pestilence; the vendetta of which Mark Twain has drawn so exact a picture in that delightful book for boys, "Huckleberry Finn." It is the Southern sense of the solidarity of the family, in opposition to extreme Northern individualism, which is the explanation of its survival, in connection with the more or less patriarchal institution of African slavery, not yet extinct in an age when it had become an anachronism.

There were, however, two efficient checks upon pri-

vate vengeance, of which the first was the right of sanctuary. It may surprise some readers of this little book to observe the extent to which the author recognizes the Bible as a sort of elementary text-book of sociology; but this is one of its legitimate uses. The children in our Sunday-schools have been made acquainted with pretty much all the leading features of primitive society, in so far as they bear directly upon the question of the order of social evolution, of which this is an instance in point. They know that Moses instituted cities of refuge, in which a homicide was safe from the avenger of blood, pending a judicial investigation of his criminal responsibility. Similar sanctuaries have been established by the customary or statutory law of most nations. At first they were the temples, and later the churches. The frightened refugee fled to some sacred place, the peace of which could not be lawfully violated, and there he had a right to remain for a certain specified period, until the affair could be arranged by intermediation and mutual concession. When we come to discuss the history of English transportation, we shall see how exile grew out of sanctuary; the peace of the gods was replaced, in the modern state, by the king's peace; the man who left sanctuary usually fled the country; and, when sanctuary was abolished, the criminal was driven from the country.

The other check upon the tendency of retaliation to run to excess was the system of composition for injuries, out of which has grown the use of pecuniary fines as a form of legal punishment. We have remarked in substance that the historical basis of all criminal codes is found in the original acceptance of

retribution as the sole remedy for wrongs, and the ethical justification of private and tribal war. When, in the course of time, the conception of the State as an entity arose from the chaotic earlier political thinking of primeval man, and it was seen that the State as such could itself be wronged, by disobedience to its mandates and defiance of its authority, the State was compelled to assume that it had the same right to inflict vengeance which inhered in a natural person. But, beyond that, the State at a very early stage in its own evolution assumed the *rôle* of an arbitrator and mediator in private controversies, as an obvious safeguard against the peril of a return to a condition of tyrannical exercise of arbitrary power, or a lapse into anarchy. It can hardly be too strongly insisted upon, that crime was originally nothing else than war. It is still war, but in a qualified sense. The plaintiff and defendant in a suit were therefore regarded as combatants in a new and compulsory arena; the State was the referee, with power to prescribe the rules governing the struggle, to enforce them, and to award the victory. It was virtually a public and official peacemaker.

Some historical instances will illustrate this relation. Burckhardt describes in an amusing way a settlement made by a Persian cadi between two men named Bokhyt and Djolan. Bokhyt called Djolan a dog, which in the Orient is a deadly insult, worse than if you should call a Frenchman a pig; and perhaps the character of the curs of the East warrants its being so regarded. There is not in the Hebrew Scriptures a single good word for a dog, and an unappreciated touch in the description of the New Jerusalem, with which the New Testament

closes, is the declaration that there will be no dogs in it. Very well. Bokhyt called Djolan a dog, whereupon Djolan promptly hit him. Bokhyt then whipped out a knife and cut Djolan in the shoulder. After hearing the facts in the case, the cadi decided that there was due to Djolan from Bokhyt for the insulting expression a sheep, and for the wound inflicted with a knife three camels; but to Bokhyt from Djolan for the blow upon the arm one camel. The balance of the account was in Djolan's favor, and, upon the payment to him by his antagonist of one sheep and two camels, peace was restored.

Sir Henry Maine has called attention to the trial scene upon the shield of Achilles, in Homer, where the question at issue was the amount to be paid in composition for a murder. One of the parties claimed that such payment was due, but the other denied the obligation. In the centre, between the disputants, lay two talents of gold, which were to be given to the spectator who should give the shrewdest opinion and the best reasons for it, the crowd to be the judge and award the prize to the winner.

Composition of injuries was no less common among the Romans than among the Greeks. Reference may here be made to the famous description by Gaius of the *legis actio sacramenti*, an action very similar to the incident depicted upon the shield of Achilles. One of the parties claimed that the other was his slave; the other denied the claim. This quarrel was referred to the prætor for decision. You need not be reminded of the great importance which attaches to ceremonial among people more or less incapable of abstract think-

ing. In all ancient legal proceedings due regard to ceremony was essential to the validity of transactions. The gestures in this case were as follows: First, the plaintiff, taking a wand, which represented a spear, advanced and touched the alleged slave with the point, after which he laid his hand upon him, thus asserting in expressive pantomime his right to him. The slave replied by taking a similar wand and repeating every motion of his pretended master. The prætor ordered both to release their hold of each other, and said that he would give a decision of the point at issue. The plaintiff then produced a sum of money, which he offered to wager that he could substantiate his claim. The defendant wagered an equal amount. When the case had been heard and an opinion rendered, the prætor took the money of both as compensation for his services, which goes to show that law has been an expensive luxury from a very remote date.

Our laws are not founded so much upon Roman law as upon the common law of England, which was a development of the practices and maxims of our Teutonic forefathers. Of the Germans, the Romans said that their business in life was bloodshed and acquisition by bloodshed. The Anglo-Saxons had three words to designate money paid in compensation for injuries. *Bot* was paid, if the injury was accidental or trifling; in compensation for a crime the aggressor paid *wite;* the word *wer* meant the valuation of a man according to his rank, which was payable in some cases to the party wronged, as *bot,* but in others, as *wite,* to the king. *Wergeld,* or blood-money, was the only penalty known to the ancient Salic law. Under Alfred the Great, minute regulations as to com-

pensation of injuries were drawn up at considerable length, according to which, if a man cut off his enemy's thumb, he had to pay *bot* to the amount of twenty-five shillings; for cutting off the first finger fifteen shillings, the middle finger nine, the fourth finger six, and the little finger five. These are given merely as illustrations of the fundamental principle of early criminal law. Moses, on the contrary, strictly forbade the payment or acceptance of blood-money.

That principle in its essence was the substitution of penalties. The *lex talionis*, as stated in the Mosaic code, was so modified as to admit of an agreement between the parties, or an adjustment by intervention of some legally constituted authority, which would dispense with the literally exact observance of the rule, "eye for eye, tooth for tooth, wound for wound, stripe for stripe," and require the aggressor to submit to some other substantially equivalent damage by way of expiation for an injury done, which would at the same time be more satisfactory to the injured party. The principle just stated underlay, of course, the doctrine of penance taught and practised by the mediæval Church. It was easy, after advancing from the thought of crime as a personal injury calling for personal retaliation to that of corporate injury calling for corporate retribution, to take the further step involved in the conception of the violation of justice in the abstract, an injury to the gods, a disturbance of the ethical balance of the universe. Indeed, it might be difficult to prove that the claim of the Church to inflict spiritual penalties for crime did not antedate the claim of the State to deal with it, as the depositary of civil and political sover-

eignty; since belief in spirits and the supernatural long preceded the acceptance of the notion of the State. As an offence against the majesty of heaven, crime assumes an immeasurable importance, and calls for reactionary penalties proportionate to the distance between the gods and men. Hence the Church, in the exercise of criminal justice, tends to greater severity than the civil power. It also enjoys a freedom from restraint, in the matter of substitution of artificial for natural expiatory punishments, to which the State can lay no claim. It has even been said that the prohibition of private vengeance was in its origin sacerdotal.

However that may be, the State gained control of the punishment of crime, in the first instance, as the natural consequence of the perception of the solidarity of families and communities. The recognition of this solidarity, on both sides of the line which separated the parties who inflicted and who bore the injury, was tolerably impartial. In Rome, when a master had been murdered by a slave, the law authorized the execution of the entire body of slaves of the murdered man. Similarly in Greece, at least in Athens, three persons, from the household where a murder had been committed, could be held until the murderer was delivered to justice, and, in default of his delivery, they could be adjudged guilty in his stead. On the other hand, if a man killed without premeditation had no relatives to claim compensation on his account, ten citizens of the *curia* could make pecuniary settlement with the homicide.

The seizure by the State of the exclusive right to inflict retributory punishments was in the interest of

peace, but not necessarily of justice, for the reason that, if crime is an offence against justice regarded in the abstract, a small offence, if its magnitude is measured by the resulting damage, may be thought by the State to merit a disproportionate penalty; and this will tend to be the case, in proportion as the power of the State is vested in an oligarchy as its absolute prerogative. Theoretically, an injury to any citizen is an injury to the social whole of which that citizen is a member; but, under the feudal system (when the king of France dared to say that he was the State), the grand *seigneurs* disposed of the property and persons of the common people, on the pretext of their criminality, almost at discretion. They had power, under the guise of composition of public injuries, to fine their dependants, until the administration of justice became an act of blackmail and of confiscation. The robber barons of the Middle Ages were plunderers, who demanded ransom in proportion to the wealth and rank of their victims. They enjoyed private and personal jurisdiction apart from the sovereign, and had their own dungeons, and erected their own gibbets, a privilege which they highly prized. Under this system, the number and severity of punishments greatly increased. By Roman law, the person of a citizen was inviolable; before corporal punishment could be administered to him, he was, by a legal fiction, reduced to the status of a slave, and declared to be *servus pœnæ*. In France, in the Middle Ages, a noble could not be punished without first being reduced from his rank. But the abolition of slavery in Europe had for its first effect simply the extension of the penalties formerly reserved for slaves to the free-born. The in-

violability of the aristocracy continued until the triumph of democracy, in England, France, and the United States, accompanied as it was by bloodshed, which did not spare even crowned heads, virtually extinguished class privileges.

CHAPTER IV.

EARLY JUDICIAL PROCEDURE.

BEFORE proceeding to discuss the treatment of crime for its repression, it seems necessary, in order to the continuity of the narrative, and as a sidelight upon questions that are likely to arise, at any rate in the mind of the reader, to turn for a moment to consider early judicial procedure, in its relation to more modern methods.

The creation of courts was an indispensable step in the effort to abolish private war. So long as private war was tolerated as a lawful mode of redressing wrong, the only measure of justifiable retaliation was the degree of passionate anger aroused in the injured person. With the delay in the exercise of summary vengeance, this anger tended to subside. The civil power, in intervening for the plaintiff, was bound to regard and reflect as nearly as possible his state of feeling. Hence the distinction in the treatment of offenders caught in the act and those not so caught.

The law of *infangthef* (from the German *infangen*, to seize and hold by the fangs) authorized the aggrieved party, or any other person, to follow a thief caught in the act, and kill him wherever found. A corresponding distinction was made, by the Twelve Tables, between manifest and non-manifest theft. Manifest theft was punishable, as in England under the law of *infangthef*,

by death; but non-manifest theft was punishable by a simple fine, equivalent to double the amount stolen.

If the State was to assume the duty of arresting wrong-doers, a systematic organization of arrests had to be devised, which was accomplished by means of the division of the population of England into shires, hundreds, and tithings.

Allusion has been made to the institution of the king's peace, by which brawls in the presence of the king, or in places likely to be frequented by him, were forbidden and severely punished. Certain streets of London were thus set apart. There was also the Church's peace; and even some of the great lords temporal enjoyed, in an age of tumult and disorder, this privilege of a quiet life. Since the transfer of political power to the people, the king's peace has become the public peace; and fighting in public is now everywhere a breach of the statutes, since the majesty of the community, as a whole, is equal to that of any individual exercising rule by divine right vested in himself alone.

The institution of the king's peace suggests another ancient institution, that of peace-pledge, as it was called. It was also called frank-pledge. The tithing was a group of ten men organized as a guild. A guild was in some sense an artificial family, held together by a common interest, and governed by rules which had the sanction of long-established usage in their favor. Guilds played a great part in the development of the trades and industries of our modern life. The tithing was a political or governmental guild. Ten guilds constituted a hundred, and every shire was subdivided into hundreds. The principle of solidarity, of which mention

has several times been made, applied to it, since all the members of any tithing were held responsible for the actions of each and every member. This mutual responsibility constituted peace-pledge. It was the original form of police protection. When it was necessary to pursue a fugitive from justice, a hue and cry was raised, and all the members of the tithings, the hundreds, and the shires were compelled to join in it. A criminal could be followed from one shire to another; but, at the boundary line dividing two adjoining shires, the sheriff and posse of the new shire took up the chase, and the members of the posse which had driven him out of their own shire were relieved, and at liberty to disperse to their own homes. The inhabitants of any shire, who could not show that they had tracked any man against whom a hue and cry had been raised, as far as their own boundary, and forced him over it, became liable for the payment of any damages which could be legally collected on account of the wrong done. Warrants of arrest were a later invention, and, when first invented, they were known as warrants of hue and cry.

Let us suppose the thief caught. How was he tried? In Oriental lands, and to a limited extent in Germany, by a popular assembly or an assembly of the elders. But in England, and generally in the north of Europe, by one of two obsolete proceedings, ecclesiastical in form and superstitious in fact, namely, by ordeal or by compurgation.

Ordeal (*urtheil*) was nothing more or less than an appeal to the Almighty to perform a miracle in vindication of the innocence of the accused.

I will endeavor to describe one form of the ordeal

of water. Imagine a church with an earthen floor. Upon the ground, in the centre of the church, a fire has been kindled, the smoke of which rises to the roof, obscuring the altar and the sacred images. Not even the pitying Christ upon his wooden cross can see what is about to happen in his name. Over the fire is an iron kettle with water in it. The company present and taking part in the ceremony is ranged in two divisions, on the two sides of the church, one party being the party of the accuser, and the other of the accused. The priest, bearing the Bible and the rood, and carrying holy water, passes around among them, sprinkling them with holy water and making them kiss the rood and the book. When the water boils, he asks them to join with him in prayer that the truth may be made known. The accused comes forward, his arms swathed in linen, and is ordered to pick up a stone at the bottom of the kettle. There were two forms of the ordeal, single and triple. In the single ordeal he immersed his hand to the wrist, but in the triple ordeal he immersed his arm to the elbow. After picking up the stone, three days were allowed for the scald to heal, when his arm was unwrapped, and, if any sign of the scald appeared, he was held to be guilty.

The ordeal by iron was substantially the same, except that the accused, instead of dipping his hand into boiling water, was required to pick up a piece of red-hot iron — one pound in the single, and three pounds in the triple, ordeal.

By this device the power of the priests was augmented to a highly dangerous degree. Practically, they had the opportunity to destroy their enemies without

risk to their friends, since they could swathe the arm more or less heavily, and even apply in advance chemical preparations which would protect the flesh from burning.

For priests under accusation no such chances were taken. All they had to do was to eat a piece of bread called *corsnæd*. It could be poisoned at the suggestion of malice, but if not, the danger of conviction was nothing.

Ordeal could be escaped in but one way, by compurgation. The accused might bring his friends, naturally members of his own tithing, to swear that they believed that the oath to his own innocence which he had taken was a true oath. If the number of compurgators was insufficient, he had to undergo the ordeal. The required number was usually twelve. This practice was no doubt conducive to wholesale perjury, but it was the precursor of trial by jury.

William the Conqueror introduced into England the wager of battle. Each party chose a champion, and the two selected fought to the death in the presence of the constituted authorities; the one who was beaten was declared to be recreant, a judgment which rendered him infamous, if he did not lose his life. This was merely regulated, limited private war.

In the wager of law, the accused appealed to a jury. The jurors could at the same time be witnesses. Indeed, if there were not enough men who already knew enough about the case to pass upon it without further evidence, the tale of jurors was completed by afforcement. The chances of the alleged culprit were rather slim, under a system which knew nothing of any jury but the grand

jury, the members of which were not merely witnesses and accusers, but also judges of his guilt or innocence, concerning which their minds were made up when they were summoned to act. The first grand assize took place under Henry II. The creation of a distinct petit jury was an afterthought, when the injustice of the original jury system forced itself upon the notice of men.

If a prisoner refused to plead to the charge brought against him, he was said to stand mute. Refusal to plead subjected him in the first instance to the *prison fort et dure*, where he was given nothing to eat, or at best only bread and water, so that he starved to death, if he continued obstinate. Subsequently for the hard and strong prison was substituted the *peine fort et dure*, which consists in pressing a man to death by placing him upon his back upon the floor, with a platform resting upon his breast, on which was piled iron until the life was crushed out of him. Dreadful as was the suffering, many men endured it without flinching to the bitter end, rather than impoverish their families by pleading and then being found guilty, which involved the confiscation of the prisoner's estate.

But it is no part of the author's intention to describe in detail the evolution of the courts in England, which has been done by Sir James Stephen, and is not germane to the special topic under discussion — the history of punishment.

CHAPTER V.

INTIMIDATION AND TORTURE.

THE second of the four methods of dealing with crime is repression by intimidation. The motive of retributory punishment is the desire to obtain indemnity for the past; that of deterrent punishment is the wish to gain security for the future. Retributory punishment is supposed to be an effort to adjust and close an account, on a mathematical basis; it is the equation of guilt and suffering — the suffering of the wrong-doer against that of the party wronged, including the state with the individual. Or if guilt is measured, not by the resulting damage, but by the intention of the culprit, there is still, in the minds of those who justify the infliction of pain and loss upon a fellow-man on the ground of the satisfaction of abstract justice, a vague notion that some ascertainable or non-ascertainable amount of sorrow or agony, endured voluntarily or under compulsion by the guilty, will exactly balance the selfishness and malice which prompt any criminal action. Many men, looking at the question from its purely ethical side, imagine that punishment on any other basis is immoral. Others think that man has neither the power to read the heart and estimate guilt, nor the right to avenge it, but that such power and right are the prerogative of Deity. Instead of seeking to restore the lost equilibrium of two hostile individuals in their relation to each other, or the

equilibrium between any individual and the community, they have in view the sole end of protecting the community against a repetition of the offence; and, to secure this end, they are ready to sacrifice any number of individuals. As against the social whole, in their opinion, the individual has no rights. That is to say, he has no rights which society is bound to respect, in comparison with its own real or fancied safety. The suffering inflicted upon the criminal may be more or less than he deserves, from the point of view of strict equity; but it does not matter, if the deterrent influence of the example is not lost upon others, who might otherwise be tempted to break the law after the same fashion. It would be idle to cherish the hope that the time will ever come when mankind will accept one of these theories to the exclusion of the other. Historically, they have coexisted; and they find by turns an echo in the approving thought of all intelligent men. On either theory, there is practically no limit to the degree of pain which may lawfully be visited upon victims of the law's displeasure.

In entering upon the painful task of recounting the history of inhumanity by which the administration of the criminal law has been disfigured and disgraced, in all ages and in every quarter of the globe, I shall not, therefore, endeavor to analyze the precise motive which prompted each of the several acts of cruelty which it is necessary to describe. The reason for entering upon this branch of the general subject is that it really forms the larger part of the history of the treatment of crime, extending from the dawn of civilization to a very recent period; and that it is the dark and bloody background

against which modern theories of the purpose and methods of treatment stand out in shining relief. The reader who shrinks from the thought of physical and mental agony as too painful for him can pass this chapter without reading.

All possible cruelties fall into two great divisions, according as they do or do not terminate in the death of the victim.

CAPITAL PUNISHMENT.

Death is the most ancient of all penalties, and the most common in antiquity, as it still is among savages. It is the most effectual mode of getting rid of troublesome or offensive characters; and the feeling of revenge, when in active operation and unrestrained by the considerations which appeal to the intellect and conscience of civilized men, is an impulse which grows by what it feeds upon, and very easily runs to excess, nor stops short until the extreme limit of possible agony has been inflicted upon the sufferer.

Among the modes of taking human life which are or have been practised by conquerors and rulers, may be mentioned: burning, beheading, hanging, drawing and quartering, breaking on the wheel, crucifixion, strangulation, suffocation, drowning, precipitation from a height, stoning, sawing asunder, flaying alive, crushing beneath wheels or the feet of animals, throwing to the wild beasts, compulsory combat in the arena, burying alive, boiling, empaling, pressing, piercing with javelins, shooting, starving, poison, the troughs, melted lead, serpents, blowing from the mouth of a cannon, and electrocution. I have named about thirty different ways of taking life,

under some of which a number of sub-varieties may be specified.

Burning, for instance, is a very ancient method. It is mentioned in the book of Genesis; Judah proposed to burn Tamar, his daughter-in-law, when she was found to have lapsed from virtue. Moses ordained burning as the penalty of incest. Achan was burned. The three Hebrew children, captives in Babylon, were cast alive into a furnace of fire. In the worship of Moloch, a hollow image of the god, of brass, with folded arms, was erected; babes were laid, as living sacrifices, in the idol's arms, and killed by the heat of the flames from a fire kindled within. Cæsar tells us that the Gauls and Britons of his day thrust captives in mass into a wicker image of gigantic stature, then piled wood around, lighted it, and, in the midst of the smoke which concealed the god and his victims from sight, the image and its living contents tumbled together into the fire, where they were consumed. In the early history of England, slaves were burned for theft; female slaves were burned by women — eighty other female slaves were compelled to assist at the ceremony. Burning was the mode of execution of slaves also in Rome. The Theodosian code prescribed this punishment for witchcraft. In the Middle Ages, burning was the usual punishment for sacrilege, parricide, poisoning, arson, and the crime against nature. Under the term sacrilege were included heresy, witchcraft, atheism, blasphemy, and the like. It was customary to drive a stake in the ground, build a platform around it, set straw and fagots in order under or upon this platform, leaving an opening for the introduction of the condemned, then bind

him to the stake by iron bands about the neck and waist, and light the bonfire. If it was desired to abbreviate the agony of the victim, a cord passed around his neck was secretly tightened from behind, before setting fire to the pile; or his heart was pierced, through the flames, by an iron dart at the end of a long hooked pole used to stir the fire. A handful of ashes was thrown in the air at the conclusion of the ceremony. In the *auto-da-fe*, or act of faith, the accused was given an opportunity to recant, upon the platform, in the hearing of the spectators; and, if he failed to avail himself of the opportunity mercifully given him to save his life, the ceremony proceeded. In London the ordinary place for kindling the sacred flame was at Smithfield; and the frequency of this punishment under one of the English queens has fastened upon her the title of Bloody Mary.

England, to her everlasting shame be it spoken, demanded the death of Joan of Arc, who was burned at the stake as a heretic, though she has since been canonized as a saint. Under Henry IV., of England, a law was enacted which authorized sheriffs to burn heretics without a writ; for this reason no estimate can be formed of the number burned in that country. Burning was also the penalty of treason. Even women were thus punished, under English law; and it is only about a hundred years ago that burning for treason was abolished. Other modes of burning have been in vogue in other parts of the world. Nero smeared the bodies of the early Christians with pitch, and, it is said, used them to light the streets of Rome. In Persia, the punishment invented by Sefi II., known as the illumi-

nated body, consisted in piercing the body with numberless holes, in which burning wicks were inserted. In China a woman is credited with the invention of *pao-lo*, which was a tall metal tube, to the top of which the victim was bound, with arms and legs encircling the tube, and a fire kindled at the bottom was kept up until his remains were reduced to ashes.

So, too, there have been many ways of beheading men sentenced to die. The Romans used a short sword called the glaive, with which, no doubt, John the Baptist was beheaded in prison. The method followed in China and Japan is described as follows:—

The criminal is carried to the place of execution in a bamboo cage, and by his side is a basket in which his head will drop when removed. He is pinioned in a very effective manner. The middle of a long thin rope is passed across the back of his neck, and the ends crossed on his chest and brought under the arms; they are then twisted around the arms, the wrists are tied together behind the back, and the ends are fastened to the portion of the rope on his back. A slip of paper containing his name, crime and sentence is fixed to a reed and fastened at the back of his head. On arriving at the place of execution, the officials remove the paper and take it to the presiding mandarin, who writes on it in red ink the warrant for execution. The paper is then replaced, a rope loop is passed over the head of the culprit, and the end given to an assistant, who draws the head forward, so as to stretch the neck, while a second assistant holds the body from behind, and in a moment the head is severed from the body. The instrument is a sword made expressly for that purpose.

It is a two-handed weapon, very heavy, and has a very broad blade. The executioners pride themselves on their dexterity in its management. After the execution, the culprit's head is taken away, and generally hung up in a bamboo cage near the scene of the crime, with a label bearing the name and the offence of the criminal.

Beheading was not practised in England before the year 1035. Prisoners sentenced to lose their heads had them taken off, in the Tower, upon a block, with an axe. Macaulay, in commenting upon the blundering and tragic execution of the Duke of Monmouth, says:—

"Within four years the pavement of the chancel was again disturbed, and hard by the remains of Monmouth were laid the remains of Jeffreys. In truth, there is no sadder spot on the earth than that little cemetery. Death is there associated, not, as in Westminster Abbey and St. Paul's, with genius and virtue, with public veneration and imperishable renown; not, as in our humblest churches and churchyards, with everything that is most endearing in social and domestic charities; but with whatever is darkest in human nature and in human destiny, with the savage triumph of implacable enemies, with the inconstancy, the ingratitude, the cowardice of friends, with all the miseries of fallen greatness and of blighted fame. Thither have been carried, through successive ages, by the rude hands of jailers, without one mourner following, the bleeding relics of men who had been the captains of armies, the leaders of parties, the oracles of senates, and the ornaments of courts. Thither was borne, before the window where Jane Grey was praying, the mangled corpse of Guilford Dudley. Edward Seymour, Duke of Somerset and Protector of the Realm, reposes there by the brother whom he murdered. There has mouldered the headless trunk of John Fisher, Cardinal of Saint Vitalis, a man worthy to have lived in a better age, and to have died in a better cause. There are laid John Dudley, Duke of Northumberland, Lord High Admiral,

and Thomas Cromwell, Earl of Essex, Lord High Treasurer. There, too, is another Essex, on whom nature and fortune had lavished all their bounties in vain, and whom valor, grace, genius, royal favor, popular applause, conducted to an early and ignominious doom. Not far off sleep two chiefs of the great house of Howard — Thomas, fourth Duke of Norfolk, and Philip, eleventh Earl of Arundel. Here and there, among the thick graves of unquiet and aspiring statesmen, lie more delicate sufferers; Margaret of Salisbury, the last of the proud name of Plantagenet, and those two fair queens who perished by the jealous rage of Henry. Such was the dust with which the dust of Monmouth mingled."

Sonorous and pathetic as is this passage, it makes no mention of Sir Thomas More, Sir Walter Raleigh, Algernon Sidney, Archbishop Laud, and the unfortunate Charles I.; names which, for one reason or another, interest us more than some of those with ponderous titles, which the brilliant historian has selected to adorn his pages.

Beheading in France has been reduced to high art, by the adoption and use of the guillotine. In its primitive form, this is a very ancient instrument of decapitation, by which Manlius, the Roman, is said to have lost his life. There are numerous mediæval engravings representing the execution of Manlius, one of which is by Albert Dürer. It was called, in the criminal statutes of the Netherlands, in 1233, the *Panke* or *Diele;* in France, in the fifteenth century, *la doloire;* in Italy, in the sixteenth, the *mannaia.* Beatrice Cenci was beheaded after this fashion. Jean d'Autun, the contemporary and biographer of Louis XII., relates that in 1507, Demetrius Giustiniani, of Genoa, for sedition, was condemned to kneel upon the scaffold and lay his

neck upon a block, when it was cut in two by a falling bascule, operated by a cord in the hand of the executioner. At Florence, Sept. 7, 1629, by a similar device, Lorenzo Zei had his head severed from his body. The nature of the instrument is well indicated by the old German name for it, the *fall-beil*, or falling axe. Marshal Montmorency of France was guillotined at Toulouse, in 1652. The "gibbet of Halifax," in use before and during the Commonwealth, and last used in 1650, consisted of two parallel upright beams, and a transverse beam, the latter heavily weighted with lead, and having a sharp, cutting edge in the form of a chopping-knife about a foot square, attached to the lower side; this cross-beam was upheld at a height of about ten feet, by a pulley; when the rope was cut by the stroke of a sword, it fell upon the victim's neck, which was securely held in place between them. Lord Morton, Regent of Scotland, having seen it, was so taken with it, that he introduced it at home, where, on the third of June, 1587, he was the first to test its efficacy in practice. For this reason, the Scotch gave it the name of the "Maiden." It is preserved in the Antiquarian Museum of Edinburgh.

The guillotine is so called after its reputed inventor, Dr. Guillotin, who was, during the French Revolution, a member of the Assembly.[1] A motion offered by him

[1] The curious reader interested in trifles may like to see the words of a song which appeared in the *Actes des Apôtres*, a royalist journal, in which the new word was first used: —

GUILLOTIN,

MÉDICIN POLITIQUE,

Imagine un beau matin
Que pendre est inhumain

to abolish the immemorial distinction in penalties for the same offences committed by the aristocracy and the common people was agreed to, Dec. 1, 1789, four months and a half after the overthrow of the Bastille. On the 25th of September, 1791, in the penal code that day adopted, it was further provided that the only mode of execution should thenceforth be by beheading, a privilege which formerly pertained to the nobles, vulgar criminals having to put up with hanging. The motive of both these innovations was humane. Louis XVI. had already abolished preliminary torture. The Assembly put an end to all torture, and to the confiscation of estates, as well as to the practice of declaring the posterity of offenders infamous. Equally

Et peu patriotique.
Aussitôt
Il lui faut
Un supplice,
Qui sans corde ni pôteau
Supprime du bourreau
L'office.
C'est en vain que l'on publie
Que c'est par la jalousie
D'un suppôt
Du tripot
D' Hippocrate,
Qui d'occire impunément
Même exclusivément,
Se flatte.
Le Romain
Guillotin
Qui s'apprête,
Consulte gens du métier
Barnabe et Chapelier,
Meme le coupe-tête,
Et sa main
Fait soudain
La machine
Qui simplement nous tuera
Et que l'on nommera
Guillotine.

humane was the intention of Dr. Guillotin in the invention of a machine, still in use in France, by which he designed to reduce the pain of death "to a shiver," as, in his enthusiasm, he explained to his colleagues. It is an instrument substantially like a pile-driver, with grooved posts, between which a heavy axe falls with sufficient force to cut off a human head. The criminal, tightly bound, is laid with his face downward and his neck resting in a curved depression in the block which receives the knife; the blade strikes him from behind, and his head falls into a basket. It was first tried upon three cadavers conveyed from the hospital to the prison at Bicêtre, in Paris, for that purpose. The son of Samson, the notorious executioner, said to his father, at this preliminary trial, that it would interfere with their business; to which the old man responded (with prophetic vision, alas!) that it would make cutting heads off so easy, that the trade would be brisker than ever. This was on the 17th of April, 1792; a week later, it was set up on the Place de Grêve. Originally the blade was at right angles with the upright standards between which it moved, but the king suggested that it would work better, if set diagonally; and, nine months afterward, he benefited by his own suggestion. The reception of the new invention by the mercurial people of France was shocking in its levity. It was the theme of numberless songs and jests. Models of it were made in wood, in ivory, in silver, and in gold, and sold as parlor ornaments and toys for children. A somewhat fashionable closing ceremony with which to wind up a dinner in an aristocratic house was for the noble hostess to produce a *figurante* supposed to

represent Danton, Robespierre, or Marat, and with a toy guillotine cut off his head, when, instead of blood, a tiny stream of crimson perfume flowed from the neck, in which the ladies at the table hastened to dip their dainty lace handkerchiefs. The revolutionists, on the other hand, adopted it as a seal.

Hanging is another very ancient method of execution. Haman, you remember, was hung on the gallows which he erected for Mordecai. Constantine the Great practised it. In France the criminal was conveyed to the gibbet seated in a cart, with his back to the horse, his confessor at his side, and his executioner before or behind him. In this order he was taken through the crowded streets. On arrival at the place of execution, he was made to ascend a ladder leading up to the gallows; the executioner preceded him, mounting backwards, so as to assist the prisoner. The confessor followed. After he had confessed him upon the scaffold, three ropes were attached to the prisoner's neck, two of them knotted, and the third intended to swing him off the ladder. The confessor then descended to the ground, leaving the culprit standing on the ladder, and the executioner upon the platform above him. The latter pushed away the ladder with his foot, swung the prisoner off, and then, horrible to relate, taking hold of the rope in order to steady himself, he jumped upon the prisoner and kicked him to death. In England, however, the cart was driven out from under, and the man's neck was broken by the fall. Executions in France are public. In England the law now requires them to be private; and in Newgate prison not even the official witnesses required to certify the death see the con-

tortions of the expiring convict, whose body falls into a sort of well, out of sight of all but the executioner and the attending physician. When the physician announces that death has taken place, the witnesses come forward, identify the corpse, and sign the necessary attestation.

Drawing was a mediæval punishment by which a man was dragged to death by horses. Brunehilda is said to have been executed in this manner.

When a prisoner was drawn and quartered, he was attached to a platform facing the sky, by two iron bands, one around his chest and arms, the other around his thighs. The weapon with which he had killed his murdered victim was placed in his hand, which was filled with sulphur, tied, and the sulphur fired, so that his hand was burned off him. Next, he was torn with hooks upon the breast and legs, and a composition of melted lead, rosin, wax, and sulphur poured into the wounds. After that, ropes fastened to whippletrees were attached to his arms and legs, each rope secured by two sailor-knots, and the horses attached to the whippletrees pulled him to pieces. A paling was erected around the spot to keep off the eager, curious crowd. The mangled remains were burned in a fire. This mode of execution was reserved for offenders guilty of lese-majesty. One of the most terrible executions upon record was that of Damiens, a poor fool who attempted, it was said, to assassinate Louis XV. He pierced his side slightly with a knife. The king received the attack with courage. Damiens, when questioned as to his motive, said that he did not want to kill Louis, but to give him a warning — to prick

him a little, because he was a great tyrant, in order to show him what might happen. All of the parliaments of France were invited to make suggestions as to the manner in which the assassin should be tortured. It would torture the reader to quote the many recommendations gravely submitted in response to this royal request. Pending a decision, in order to prevent his escape, he was tied to an iron bed. The boot was finally agreed to be the most terrible form of suffering, and he was subjected to it for an hour and a half, then taken away to be drawn and quartered, but his sinews were so tough, that he was drawn for an hour, without avail, and a knife had to be used with which to quarter him, while still alive. A woman who was looking on, seeing, from the balcony where she stood, the frantic efforts of the horses to pull harder, exclaimed, "Oh, the poor horses!"

Breaking on the wheel, authorized by Francis the First in 1534, was really a way of pounding a man to death. The wheel was in the form of a cross of Saint Andrew, with four arms of equal length sloping slightly toward the point of intersection, upon which the prisoner was laid, with his face upward. Supports were nailed to the arms of the cross, so as to come half way between the shoulder and the elbow, the elbow and the wrist, the hips and the knees, and the knees and the ankles. With a heavy iron bar the upper and fore arms, the thighs and shinbones, could each be broken into three pieces. After being thus rudely disjointed, the body was bent backward, until the head and heels met, when it was attached to a wheel, with the hubs sawed off, which was rapidly revolved on a pivot, until the sufferer was re-

lieved by death. John Calvin is sometimes reproached with theological asperity for having burned Servetus at the stake, as if his religious opinions had prompted that inexcusable cruelty, instead of its being a custom of the age in which Calvin lived. But, as an offset, it may be mentioned that, less than a century and a half ago, Voltaire, who represents the opposite pole of religious thought, in one of his private letters, expresses his gratitude to God for the breaking of the priest Malacreda upon the wheel, and in another the comfort which it was to him to hear that three Jesuits had been burned alive at Lisbon. This form of punishment was known in Greece, where it was applied to slaves. In Athens it was proposed to break Phocion. This was really a form of beating to death, accomplished by the natives of South Africa in a more primitive way, with clubs. By the law of the Twelve Tables *laesa majestas* was punished by flogging to death.

As to crucifixion, Darius is said to have crucified, on one occasion, two thousand Assyrians, and, upon another, three thousand Babylonians at once. Regulus was crucified, but not until he had been rolled down hill in a barrel driven through from the outside with iron spikes. On the cross his eyelids were removed, that his eyes might be exposed continuously to the sun.

There are two modes of impaling, one by forcing a stake or spear through the prisoner's body and pinning him to the ground, the other by forcing his body upon a sharpened point. The latter is closely allied to crucifixion. In Siam a stake is driven longitudinally through the criminal's body, and the body is then elevated upon this stake, which is firmly driven into the ground. Sus-

pension on hooks has been practised in the West Indies; also, for abjuring the Mohammedan religion, in Algeria and in India.

Strangulation, as described in Homer's "Odyssey," appears to have been by hanging. In Sparta it was effected by two executioners, who pulled at the opposite ends of a rope which encircled the victim's neck. Different modes of execution are looked upon as more or less infamous in different countries; in Turkey the bowstring is reserved for the nobility. In China, too, strangulation is regarded as more honorable than decapitation. The Spanish garrote is a mode of strangulation, no longer accomplished, as formerly, by ropes and cords, but by enclosing the neck in an iron ring, which can be tightened from behind by a screw, which is turned until the point of it pierces the spinal column. Strangulation before burning was an act of mercy.

Death by suffocation is mentioned in the Old Testament; Hazael the Syrian murdered Benhadad by dipping a thick cloth in water and spreading it over the king's face. Also in the Apocrypha, where it is said that Antiochus Eupator put Menelaus to death, at Berea, "as the manner is in that place." The Bereans had built a tower fifty cubits high, full of ashes, which could be stirred by some round instrument, possibly a wheel, "hanging down on every side into the ashes." Into this ash-heap Menelaus was thrown, as a punishment for sacrilege. Prisoners have also been suffocated by smoke, especially that given off by burning sulphur. Marshal Pelissier destroyed a force of Algerians who had taken refuge in a cave by smoking them to death.

Drowning is, of course, a mode of suffocation. Jesus

Christ possibly alludes to the legal punishment of drowning in Matthew 18 : 6. The story of the drowning of the Duke of Clarence is thus quaintly told by Sir Thomas More in "The Pitiful Life of King Edward the Fifth."

"George, Duke of Clarence, was a goodly and well-featured prince, in all things fortunate, if either his own ambition had not set him against his brother, or the envy of his enemies had not set his brother against him; for were it hy the Queen or the nobles of her blood, which highly maligned the King's kindred (as women commonly, not of malice, but of nature, hate such as their husbands love), or were it a proud appetite of the Duke himself intending to be King, at the leastwise, heinous treason was laid to his charge, and finally, were he in fault, or were he faultless, attainted was he by Parliament, and judged to death; and thereupon hastily drowned in a butt of Malmsey within the Tower of London. Whose death King Edward (although he commanded it), when he wist it was done, piteously he bewailed and sorrowfully repented it."

The manorial pits for drowning or half drowning women, like the manorial gibbets for hanging men, were highly prized prerogatives of the early English nobility.

Burying is the terrene equivalent of drowning. When the Third Crusade started from Europe for the Holy Land, certain rules for the government of its members were adopted, and it was announced that their violation would be punished, if at sea, by throwing the offender into the water, but if on land, by interring him alive. In Rome vestal virgins guilty of a breach of the vow of chastity were thus buried.

Sefi, the eighth Shah of Persia, whose name is a synonym for cruelty, believing that an unsuccessful attempt had been made to poison him, buried forty of the women of his seraglio, including his mother. Tacitus

records the fact that lewd women were buried alive, by the Gauls, in swamps. Jews were buried by Pepin of France. In some parts of Germany, even since the beginning of the present century, this was the penalty for infanticide.

In 1347, two counterfeiters were boiled alive at Paris. This penalty for counterfeiting was in force in the sixteenth century. The boiling was sometimes done in oil. French law tolerated it until 1791, though it had long fallen into practical disuse. Under Henry VIII., of England, poisoning was for ten years regarded by law as treason, and it was punishable in this manner. The Bishop of Rochester's cook, a man named Rose, was publicly boiled at Smithfield, in 1630, for throwing poison into the yeast-tub in the kitchen of the episcopal palace. His occupation may have suggested the mode of his death.

Stoning, common among the ancient Hebrews, was regarded by them as the most infamous of punishments, and for this reason, apparently, it was denounced against idolatry. The execution took place outside of the camp or city, and the witnesses were required to throw the first stone, but all the people took part in the ceremony. Æschylus was condemned to suffer death by stoning for having written a tragedy which was thought to be irreverent, but the sentence was not executed. Among the Romans this was a military punishment. Stoning was forbidden by Constantine. A law of Æthelstan, in the tenth century, prescribed it as the punishment of male slaves for theft; the thief was stoned by eighty fellow-slaves, and if any of them missed the mark three times, he was thrice whipped.

Pressing to death was a mode of execution known to the Carthaginians. The instrument of torture known as the scavenger's daughter, in use in the Tower of London, will be described below, under "Torture." The judgment of penance, referred to at the close of the last chapter, was in these words: "That you be taken back to the prison whence you came, to a low dungeon into which no light can enter; that you be laid on your back on the bare floor, with a cloth around your loins, but elsewhere naked; that there be set upon your body a weight of iron as great as you can bear — and greater; that you have no sustenance, save, on the first day three morsels of the coarsest bread, on the second day three draughts of stagnant water from the pool nearest to the prison door, on the third day again three morsels of bread as before, and such bread and such water alternately from day to day until you die."

Among the punishments mentioned in the Epistle to the Hebrews is sawing asunder, or "dichotomy," which is the penalty for horse-stealing in Tartary, for poisoning in Persia, and was formerly, with obvious fitness, inflicted for bigamy in Switzerland. The *bodoveresta*, prescribed by Zoroaster, the Persian lawgiver, against incompetent physicians and mothers who killed their offspring, was very similar to the Chinese penalty entitled *ling-chee* or "cutting into a thousand pieces," while still alive.

Compare with the horrible torture just mentioned the sentence pronounced, in the reign of Edward the Second, against the Earl of Carlisle, for high treason: "The award of the court is that you be drawn, and hanged, and beheaded; that your heart, and bowels, and entrails,

whence came your traitorous thoughts, be torn out, and burnt to ashes, and that the ashes be scattered to the winds; that your body be cut into four quarters, and that one of them be hanged upon the Tower of Carlisle, another upon the Tower of Newcastle, a third upon the Bridge of York, and the fourth at Shrewsbury; and that your head be set upon London Bridge, for an example to others that they may never presume to be guilty of such treason as yours against their liege lord."

Precipitation from a height, another of the punishments forbidden by Constantine, was the form of death inflicted upon Æsop, the writer of fables. Pygmalion, King of Tyre, visited it upon two priests guilty of having eaten the flesh of human sacrifices. In the history of the Maccabees it is written that Jewish mothers, with their infants in their arms, were thrown from the walls of Jerusalem. The Tarpeian rock at Rome was a place set apart for this mode of execution, chiefly practised upon slaves guilty of theft.

The Carthaginian general, Hasdrubal, before throwing his Roman prisoners from a rock, flayed them alive. Excoriation is named as a penalty in the laws of Henry the First of England. The general reader will observe occasional references in historical and other works to the ancient practice of nailing up human skins where they could be seen by the public, and the minds of those predisposed to crime be stricken with terror at the hideous spectacle.

Deserters from the army are, since the invention of fire-arms, usually shot to death. The fact is perhaps not generally known that, in some at least of the Western territories, convicts sentenced to endure capital punish-

ment are given their choice whether they will be hung or shot. The author was shown, in a territorial prison, the location of the convict against the wall, and the spot where the tent is pitched in which the armed guards are concealed; to one or more of them are given guns loaded with blank cartridges. The spot where the Paris communists shot Archbishop Darboy, within prison walls, is shown to visitors, and excites much interest; the marks made by the bullets are still visible. The ancient equivalent form of death was by piercing the victims with javelins, which was also a military punishment.

Prisoners have sometimes been starved to death, either by withholding from them all food, or by feeding them on bread and water, or other provisions known to be inadequate to sustain life.

The Athenians forced Socrates, Phocion, and many others, to drink a poisonous decoction, and so to end their own lives. Years afterwards, statues were erected to both these heroes; and the remains of Phocion were brought back from Megara and interred in Athens, at the expense of the public treasury.

Somewhat similar was the ancient Moslem punishment for wine-drinking, namely, pouring melted lead down the offender's throat.

Daniel was thrown, by Darius the Mede, into a den of lions. In Siam prisoners are sometimes thrown to crocodiles. The Roman arena was the place of martyrdom of thousands of the early Christians; the remains of Roman amphitheatres may still be traced in Great Britain. In China faithless wives are given to elephants to be by them trampled under foot. This

was the mode of punishment of deserters adopted by Hamilcar, the Carthaginian general.

Criminals have also been thrown into dens of serpents, or tied down in forests where it was certain that they would be bitten by serpents. The Roman penalty for parricide at one time consisted in sewing up the rebellious child in a leather sack, together with a live serpent, a cock, and a goat, and throwing the sack and its contents into the sea.

Plutarch, in his memoir of Artaxerxes, describes one of the most terrible of all recorded punishments, which was inflicted upon Mithridates, by order of the Persian monarch, for boasting, when overcome with wine, that he, and not Artaxerxes, had in truth slain the mighty Cyrus. He was encased in a coffin-like box, from which his head, hands, and feet protruded, through holes made for that purpose; he was fed with milk and honey, which he was forced to take, and his face was smeared with the same mixture; he was exposed to the sun, and in this state he remained for seventeen days, until he had been devoured alive by insects and vermin, which swarmed about him and bred within him.

Barbarous as are these tales of cruelty and hatred, was the blowing of the sepoys from the mouths of British cannon in India any less shocking?

Many travellers have seen, in the torture chamber at Nuremberg, the figure of a woman constructed in such a manner as to embrace a victim thrust into her arms, and pierce him to death with knives. A similar instrument was invented by Nabis, a Spartan tyrant, who named it the *Apega*, after his wife.

SECONDARY PUNISHMENTS.

Mutilation of the body is an ancient penalty known to the Egyptians, who cut out the tongues of those who betrayed the secrets of the state, and cut off the hands of forgers and counterfeiters, with an apparent purpose in both cases to make the punishment fit the crime, and, at the same time, effectually to prevent its repetition; the Egyptian penalty for rape was of a similar nature. When Judah and Simeon cut off the thumbs and great toes of Adoni-bezek, he said, "Threescore and ten kings, having their thumbs and their great toes cut off, gathered their meat under my table: as I have done, so God hath requited me." The Philistines, before setting Samson to grind in the prison, put out his eyes. Mutilation was common among the Persians. Eight hundred Greek captives presented themselves before the victorious Alexander, with a petition that he would avenge their wrongs: some of them had lost their hands, others their feet, others their noses and their ears; their faces had then been marked with hot irons, and in that pitiful condition they had been delivered to the scorn of the Persian people. The Emperor Constantine forbade this practice, characterizing it as one of "the cruelties of the ruthless barbarians." A law of Canute, the Danish king of England, evidently designed to provide a humane substitute for capital punishment, ordained: "Let his [the offender's] hands be cut off, or his feet, or both, according as the deed may be. And if he have wrought yet greater wrong, then let his eyes be put out and his nose and his ears and his upper lip be cut off, or let him be scalped, whichever of these shall counsel those whose

duty it is to counsel thereupon, so that punishment be inflicted, and also the soul preserved." Mr. Pike says that William the Conqueror or his council "enunciated the principle that malefactors so debased as those of England should not suffer death, because it was better that they should, as cripples, serve for a warning to the ill-disposed," but that the Synod of London, in 1075, under Lanfranc, the wise and gentle Italian archbishop of Canterbury, expressed disapproval of this maxim. Under Henry I., "the chief moneyers throughout the whole of England were convicted of making pence in which there was base metal illegally alloyed with the silver. By the king's command they were all brought to Winchester, and there suffered in one day the loss of their right hands and of their manhood." The spectacle of maimed offenders at large did not have the deterrent effect expected of it; on the contrary, it provoked imitation. "The brutalizing effect which it had upon the whole population can hardly be conceived, in this modern age of refinement. In the midst of the general lawlessness every man was, when he had the power, a law unto himself, and inflicted upon his enemy the punishment which the law of the land destined for the evil doer. Maiming, that is to say, depriving a human being of a member, was consequently one of the commonest of offences — for which the law provided a wholly inadequate remedy in the appeal of mayhem." Mayhem was a simple trespass until the reign of Henry IV., who "assented to a statute which, for the first time, declared that it was a felony to cut out the tongue or put out the eyes of the king's subjects, of malice aforethought. It was not, for many a generation

afterwards, a felony to slit the nose, to cut off the nose or lip, or to cut off or disable any of the limbs." Not until the passage of the "Coventry Act" in the reign of Charles II., was all mayhem made felonious. Mr. Pike, from whom the foregoing quotations are taken, gives the following highly pictorial description of the ceremonial attending the loss of the right hand, under Henry VIII. : —

"For merely striking, so as to shed blood, the loss of the right hand was the penalty, as it had been for many crimes before the Conquest. The offender, as in cases of murder in the court, was tried before the Lord Great Master, or the Lord Steward of the Household, and when found guilty, suffered according to a most remarkable and carefully devised ceremony. He was brought in by the Marshal, and every stage of the proceedings was under the direction of some member of the royal household. The first whose services were required was the Serjeant of the Woodyard, who brought in a block and cord, and bound the condemned hand in a convenient position. The Master Cook was there with a dressing knife, which he handed to the Serjeant of the Larder, who adjusted it and held it 'till execution was done.' The Serjeant of the Poultry was close by with a cock, which was to have its head cut off on the block by the knife used for the amputation of the hand, and the body of which was afterwards to be used to 'wrap about the stump.' The Yeoman of the Scullery stood near, watching a fire of coals, and the Serjeant Farrier at his elbow to deliver the searing-irons to the surgeon. The Chief Surgeon seared the stump, and the Groom of the Salcery held vinegar and cold water, to be used, perhaps if the patient should faint. The Serjeant of the Ewry and the Yeoman of the Chandry attended with basin, cloths, and towels for the surgeon's use. After the hand had been struck off and the stump seared, the Serjeant of the Pantry offered bread, and the Serjeant of the Cellar offered a pot of red wine, of which the sufferer was to partake with what appetite he might."

The following account of the case of William Prynne,

a barrister of Lincoln's Inn, in the time of Charles I., is borrowed from Hallam: —

"Prynne, a lawyer of uncommon erudition, and a zealous puritan, had printed a bulky volume, called 'Histriomastix,' full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this he adverted to the appearance of courtesans on the Roman stage, and by a satirical reference in his index (women actors notorious whores), seemed to range all female actors in this class. The Queen, unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at Court. Prynne was already obnoxious, and the Star Chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of £5,000, and to suffer perpetual imprisonment."

Timothy Penredd, who was in 1570 convicted of counterfeiting the seal of the court of Queen's Bench, and forging writs of arrest, was sentenced to be placed in the pillory in Cheapside, on two successive market-days, with one ear nailed each day to the post, in such a manner that he would have to tear it off to get away.[1]

Louis XV. of France placarded the camp at Compiègne in 1765 with the announcement, that any soldier

[1] James Howell, in his "Familiar Letters," written in the first half of the seventeenth century, relates an anecdote which well illustrates the general fear of this form of mutilation. He says: "As I remember, some years since there was a very abusive satire in verse brought to our King; and, as the passages were a reading before him, he often said, 'That if there were no more men in England, the rogue should hang for it.' At last, being come to the conclusion, which was (after all his railing), —

> 'Now God preserve the King, the Queen, the peers,
> And grant the Author long may wear his ears;'

this pleased his Majesty so well, that he broke into a laughter, and said, 'By my soul, so thou shalt, for me. Thou art a bitter, but thou art a witty knave!'"

who should blaspheme the name of God, the Virgin, or any of the saints, should have his tongue pierced with a hot iron.

Another form of disgraceful marking was by branding. In Athens, slaves were branded with the names of their masters; soldiers, with those of their generals. The Athenians branded their prisoners of war. In the war with Samos, the Samians, having gained a victory, retaliated by branding their captive adversaries with an owl, the bird sacred to Minerva, with the effigy of which the coins of Athens were stamped. Under Roman law the brand was placed upon the forehead; but Constantine, who was a humane ruler, and introduced many reforms in criminal jurisprudence, ordained that it should be upon the hand or leg, in order that it might be less conspicuous. In France, the shoulder was the spot selected. The ancient brand was the *fleur-de-lis*, the royal emblem; but afterward it was the initial of the crime committed, as "V" for *voleur* (thief). That the mark made by the branding-iron might be plainer and more permanent, the skin was first scraped, so as to insure the burning of the blood which collected on the surface of the wound. The English brutality in this, as in many other forms of punishment, is shown in the treatment of the Patarines, a heretical sect of the twelfth century, whose foreheads were seared with a hot iron. They were publicly whipped, and every Englishman was forbidden to give them food or shelter, so that they perished of cold and hunger. Under Edward VI. it was ordered that vagabonds should be branded "V." A vagabond thus marked was to be adjudged the slave, for two years, of any one who would

take him. If he ran away, he was to be branded "S," and adjudged a slave for life; if he ran away again, he was to be hanged. If no one would take him, he was to be branded "V" upon the breast, and sent to his native place, there to be compelled to labor upon the highways, or at other public work, or as a common slave from man to man. If he misrepresented the place of his birth, he was to be branded in the face. Brawlers in churchyards were branded "F" on the cheek. During several generations, persons who had taken benefit of clergy were burned on the brawn of the thumb with the initial of the offence with which they were charged, in order that they might not plead clergy a second time; but in 1698 such persons were, by a new statute (which was repealed eight years later) directed to be burned in the left cheek. Persons having in possession filings or clippings of current coin were branded "R" on the right cheek. Branding was abolished in England under George III.

Flogging was authorized by the Mosaic code. "The judge shall cause him to lie down, and to be beaten before his face, according to his fault, by a certain number. Forty stripes he may give him, and not exceed; lest if he should exceed, and beat him above these with many stripes, then thy brother should seem vile unto thee." Under Roman law, a freeman could not be beaten with stripes; yet flogging was authorized as a punishment for aggravated theft; but the thief had first to be declared *servus pœnae,*— the slave of the penalty. Paul's indignant protest, "They have beaten us openly, uncondemned, being Romans," will here recur to many readers. This was also a punishment under Anglo-

Saxon law. Petty thieves were flogged in the reign of George III.; men in public, women in private. Whipping for common law misdemeanors has never been formally abolished, though it is not administered where it is not authorized by statute. The lash is now regarded less as a retributive penalty than as a means of enforcing discipline. Some persons have confidence in its deterrent influence, approve of the retention of the whipping-post in Delaware, and advocate the enactment of laws reviving it elsewhere for certain offences, especially for wife-beating. As to this point, the following observations of Mr. Pike are well worthy of consideration: —

"There is, no doubt, a dramatic fitness in punishing the deliberate infliction of bodily pain by the deliberate infliction of bodily pain in return. And if the maxim 'An eye for an eye and a tooth for a tooth' is a proper guide for lawgivers in a Christian country in the nineteenth century, there remains nothing more to be said, except that the 'cat' is, in many cases, too merciful an instrument. If, however, the object of punishment is not vengeance, but the prevention of breaches of the law, it seems useless, so far as example is concerned, to flog a prisoner within the prison walls. The whole power of such a deterrent as flogging (if it is to be regarded as a general deterrent) must be in the vividness with which it can be presented to the imagination of persons who have a tendency to commit, but who have not yet committed, the offences for which flogging may be legally inflicted. But the most ready manner of bringing it home to the mind of the populace is by exhibiting it in public, which, as has already been shown, has the very opposite effect from that which is desired. The fact that the lash has been administered to a convict is now and again brought to the knowledge of the public by the press, and sometimes with the aid of illustrations. But the impressions made, so to speak, by such exhibition at second-hand, cannot be so forcible as that made by the old form of exhibition at first-hand; and in proportion as it becomes effectual at all, it

must be attended by the effects which are produced by all brutal punishments inflicted *coram populo*. It is far from an agreeable task to watch the face and figure of the flogger as he executes the sentence; and few would deny that the moral effect upon him must be as great as upon the criminal, whom it is his duty to whip. The state, when it sanctions the use of the lash, causes a human being to do just such an act of violence as it desires to check; it must either recognize the use of the 'cat' as an art of which it is prepared to employ the professors, or it must, on each particular occasion, offer a reward to some one to come into prison and commit a violent assault. It follows, therefore, that even if every criminal who is flogged is deterred from repeating his offence, the gain, small as it is, has been purchased at a very high price — indeed, at the expense of consistency."

The *knut* and the bastinado are savage forms of flogging. The *knut* in Russia has been abolished, but its place has been taken by the *plet*, a sort of heavy cat.

The status of a prisoner is in many respects analogous to that of a slave. War may be carried on in the open field, *vi et armis*, or it may be reduced to a purely legal contest in the courts. In either case the vanquished party has to bear the costs and the consequences. From the condition of a prisoner of war to that of a slave is but a step; why should the condition of a convict be exempt from the liabilities incident to a captive in battle? The conqueror can dispose of the conquered at his pleasure. Compulsory labor is therefore a natural sequel of the condition of servitude, whether military or penal. The Israelites in Egypt were neither convicts nor captives, yet Pharaoh set them to making brick under cruel taskmasters. To be sent to the mines was the severest of Egypt an penalties, except that of death. Mines and quarries were worked by convicts in Greece and in Rome. The conquered Lesbians were

compelled to dig deep ditches around the walls of Samos. Sabacos substituted for the penalty of death, compulsory labor for life. Sesostris made prisoners of war dig canals and haul stones for the construction of the temples. Prisoners of war were by the Athenians compelled to serve as rowers in vessels of war. This is perhaps the first indication in history of the use of the galleys for punishment, which in the Middle Ages was so common, that countries without seacoast of their own sold prisoners to countries which had. Venice was naturally a principal buyer in this unique slave-market. Maria Theresa, that noble woman who put an end to so many of the barbarities prevalent before her day, has the honor of having, in 1762, forbidden this practice also. A modified form of slavery survives wherever prison labor is sold to private persons for their pecuniary profit.

Interdiction and civic degradation are other incidents of the loss of personal liberty. In modern times and in civilized nations they go no farther than the temporary or permanent denial to a convict of his proper rank, or of the right to vote, to hold office, to serve on a jury, to carry arms, and (in France) to wear a decoration, or be employed as a teacher. But, as in the case of the Patarines cited above, the denial might extend to rights essential to the preservation of life. In the early history of Rome, a citizen might be interdicted the use of fire and water. The purpose of this was to compel him to exile himself, since he could not legally be banished. Draco, the Athenian lawgiver, excluded murderers from the temples, the games, from public banquets and assemblies. The bills of attainder for treason with

which the records of the English Parliament are stained (of which there was probably not one which was not the offspring of partisan hatred) worked corruption of blood, the effect of which was that descent could not be traced through the person whose blood was corrupted; and thus the innocent offspring of men guilty of none but political crimes were deprived of the hereditary right to their ancestral estates. Attainder and corruption of blood followed sentence of death in all cases of treason or felony. But Parliament could try alleged offenders in their absence, and condemn them upon any evidence which they chose to accept as sufficient. The great Act of Attainder passed by the Irish Commons, to which James II. attached his signature, contained between two and three thousand names, at the top of which was half the peerage of Ireland. Macaulay says of it, that "Any member who wished to rid himself of a creditor, a rival, a private enemy, gave in the name to the clerk at the table, and it was generally inserted without discussion." Even dead men were attainted; Oliver Cromwell, for instance. Parliament resolved, under Charles I., in 1660, that "the carcasses of Oliver Cromwell, Ireton, Bradshaw, and Pride should be taken up, drawn on a hurdle to Tyburn, and there hanged up in their coffins for some time, and after that buried under the gallows."

The confiscation of estates was not merely an act of manifest injustice to heirs, living and yet unborn, but an obvious inducement to judicial murder. Men accused and convicted of treason, by their rivals for royal favor, were robbed of their property for the enrichment of their political enemies. The same result was reached by the heavy fines imposed by the Star Cham-

ber, where, as Hallam says, "Those who inflicted the punishment reaped the gain, and sat, like famished birds of prey, with keen eyes and bended talons, eager to supply for a moment, by some wretch's ruin, the craving emptiness of the exchequer." He further observes that "The strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof." Under the feudal system, escheats to the crown constituted a large portion of the revenues of the Norman kings of England. Whatever else may be said of feudalism, it was a gigantic scheme of extortion in return for very imperfect protection, by which the powerful and the rapacious built up their fortunes at the expense of their dependants; and the king was the chief extortioner, against whose demands not even the grand seigneurs could protect themselves. Thus the system contained within itself the providential seed of its own destruction. The rapacious of our time rob their victims by other methods, but their ultimate overthrow is probably involved in the very audacity of the means by which their temporary power to despoil their fellowmen has been attained.

Closely connected with civic degradation were the insults heaped upon offenders, in their public exposure both before and after death. The pillory and the stocks are the forms of exposure best known to us, and need no description. The continental equivalent for them was the *carcan*, a ring closed by a lock, by means of which a criminal was attached by the neck to a chain, and so fastened to a post. This is the Latin echo of an ancient Persian device; namely, an acute triangle, in the

narrow angle of which the prisoner's neck was confined, while his hands were extended and attached to the opposite side; in this position he could walk about. The special objection to the pillory and the *carcan* was that the populace had the right to pelt victims thus exposed with decayed eggs and fruit, which was unpleasant, and with stones, which was dangerous. The *carcan* was abolished in France in 1832, and the pillory in England in 1837.

The Spanish mantle (of which there is an engraving in John Howard's book) was a cask, with holes cut through the sides for the prisoner's arms, and through the top for his head; he wore it like a coat, and in this ridiculous costume was marched around the town at a cart's tail. Scolds were formerly ducked in a pond by means of a ducking-stool, of which there were various patterns, the essential thing being a seat, to which the woman was strapped, at the end of a long lever operated from the bank, to the rude delight of the spectators.[1]

[1] In "The Little Manx Nation," by Hall Caine, a tale is told of Bishop Thomas Wilson, "half angel, only half man, the serenest of saints and yet almost the bitterest of tyrants." Katherine Kinrade was a poor ruin of a woman, who, being mentally defective, gave birth in succession to three illegitimate children. For the first, the Bishop made her do penance in a white sheet at the church doors. For the second, he committed her for twenty-one days to his prison at the Peel. "It is a crypt of the cathedral church. You enter it by a little door in the choir, leading to a tortuous flight of steep steps going down. It is a chamber cut out of the rock of the little island, dark, damp, and noisome. A small aperture lets in the light, as well as the sound of the sea beating on the rocks below. The roof, if you could see it in the gloom, is groined and ribbed, and above it is the mould of many graves, for in the old days bodies were buried in the choir." The third time, he ordered her to be dragged through the sea by a rope tied to the stern of a boat. "After undergoing the

They were also forced to wear the brank, which was a cage-like helmet or mask of iron, with a triangular piece entering the mouth and pressing upon the tongue, as a delicate reminder of the proper use of that unruly member. In the Middle Ages a favorite punishment for adulteresses was to scourge them naked through the streets. There were many ways of exposing the dead to derision. Sometimes their bodies were thrown into the streets to be devoured by dogs. Oftener their heads were elevated upon poles. The head of the unfortunate Princess of Lamballe, the favorite of Marie Antoinette, was carried by a mob about the streets of Paris, placed on the counter of a *cabaret*, where wine was poured down the throat, and the Queen was loudly

punishment the miserable soul was apparently penitent, 'according to her capacity,' took the communion, and was 'received into the peace of the church.' Poor human ruin, defaced image of a woman, begrimed and buried soul, unchaste, misshapen, incorrigible, no 'juice of God's distilling' ever 'dropped into the core of her life;' to such punishment was she doomed by the tribunal of that saintly man, Bishop Thomas Wilson! She has met him at another tribunal since then; not where she has crouched before him, but where she has stood by his side. She has carried her account against him to Him before whom the proudest are as chaff.

"None spake, when Wilson stood before
The Throne;
And He that sat thereon
Spake not; and all the presence-floor
Burnt deep with blushes, and the angels cast
Their faces downwards. — Then, at last,
Awe-stricken, he was ware
How on the emerald stair
A woman sat divinely clothed in white,
And at her knees four cherubs bright
That laid
Their heads within her lap. Then, trembling, he essayed
To speak — 'Christ's mother, pity me!'
Then answered she,
'Sir, I am Katherine Kiurade.'"

called to the window of her cell in the Temple to gaze with horror upon the bloody spectacle, but was humanely prevented from responding to the call. Exposure in chains after death was once common. Bunyan saw, in his dream, Simple, Sloth, and Presumption "hanged up in irons a little way off on the other side." These irons were frames rudely corresponding to the shape of the body, so contrived as to hold it until decomposition was complete, and only the skeleton remained bleaching in the sun.[1] The last man to hang in Eng-

[1] The following description of chains still preserved at Rye, England, is borrowed from *Notes and Queries*, (sixth series, v. 8, p. 183). "To begin at the top, we have a swivel loop. This is obviously for giving a rotatory as well as a swinging motion to the carcass. This swivel is fixed into a frame formed of two pieces of hoop iron bent over, like the wooden frame of a funeral garland, and of sufficient depth to reach from the top of a man's head to his shoulders; the four ends are then riveted into a band encircling his neck. At opposite sides coarse chains are riveted on to the neck band and descend on either side, with four links, to about the middle of the chest. A second and much larger band is then passed through the fifth link and riveted in front. Then come three more links in the same continuous chains, and a third band, which, passing through a fourth link, is similarly riveted in front. The chains continue with three more links, a band is passed through a fourth and final link, and, being riveted in front like the others, nearly completes the framework for the body. At the back a strip of iron starts from the neck band and, bifurcating above the shoulders, descends in parallel lines; it is successively riveted to the three body bands, and being again united into a single strip, ends in a loop immediately below the bottom hoop. Thus the body framing is rendered rigid and complete. Suspended by a chain from the loop behind, and from the lowest band in front, are separate frames for the legs, consisting of circular bands of different sizes for the knees and ankles, connected by vertical side strips riveted to them. These leg frames are so arranged, with extra length in the side pieces, that they can be taken up or let down, according to the length of the legs of a body within the chains. It should also be noted that the body bands are punched with holes, like a leather strap, so that they can be tightened or let out, according

land was a bookbinder named Cook, in 1834, at Leicester. That year, by William IV., hanging in chains was forbidden. A singular tale is related by Plutarch of the beneficial effect of exposure in Ionia, where an epidemic of suicide on the part of young girls was stopped by the passage of a law, directing the dead bodies of those who perished by their own hand to be hung naked on the public gallows; the fear of infamy proved stronger than the fear of death.

It remains only to mention exile, which is essentially an alternative for the death sentence, and has the same effect, so far as the community which desires to rid itself of a culprit is in question. Banishment may, however, be temporary or for life. It may also be compulsory, or, by a legal fiction, it may be voluntary, the criminal being liable to execution if he remains at home. It was by this subterfuge that transportation was instituted, as we shall see in a subsequent chapter. Transportation always involves the dilemma that the persons exiled are either good or bad citizens; if good, they are a loss to their native country; but if bad, that

to the size required. This seems to indicate that the same chains were used over and over again, but that it was necessary, for other reasons, that the chains should fit."

Another correspondent of the same periodical thinks that the first instance of an executed person hanging in chains must have been in 1381, and he quotes Sir H. Chauncey's "Hist. Antiq. of Hertfordshire:" "Soon after the King came to Easthamsted, to recreate himself with hunting, where he heard that the Bodies which were hanged here were taken down from the Gallowes and removed a great way from the same; this so incensed the King, that he sent a writ, tested the 3d of August, Anno 1381, to the Bailiffs of this Borrough, commanding them upon sight thereof to cause chains to be made, and to hang the Bodies in them upon the same Gallowes, there to remain so long as one Piece might stick to another, according to the Judgment."

country has no right to impose the burden of their presence upon an unwilling community. Every community is unwilling, which has reached a stage of development at which it is self-sustaining without convict labor. The Romans divided banishment into deportation and relegation; deportation was exile to a place specified, from which the banished were not allowed to depart; but relegation was simple exile, and did not involve loss of citizenship. A form of banishment called ostracism (from the Greek word for a shell, because shells were used for balloting) existed at Athens, to which Aristides, Alcibiades, Themistocles, Xenophon, Thucydides, and Demosthenes were subjected. It was inflicted by popular suffrage at a special election, at which not less than six thousand votes must be cast, of which a majority must be in favor of the exile of the candidate from Athens for a period of ten years. Ostracism did not involve the confiscation of the exile's estate, as the ordinary form of banishment did.

Outlawry may also be regarded as a sub-variety of exile.

The mind dislikes to dwell upon acts of violence, such as have been described in this dark chapter of human nature at its worst. It is necessary, however, to know from what we have been delivered, in order to appreciate what we enjoy; and what has been tried and failed, in order to realize the folly of repeating useless experiments. It may seem to the young and inexperienced reader that human nature has changed and is no longer what it was, when these outrages were perpetrated in the name of law and of religion. It is, alas, not true, as the veterans of our own Civil War could

testify, or the residents upon or near the theatre of the conflict, if they chose to do so. And yet the self-restraint of both the great armies therein engaged is the pride of every American, one of the wonders of history, and a tribute to the ethical influence of democratic institutions. Our social and political relations have changed, and therein is the secret of the growth of a humane and brotherly feeling among men, which is reflected in our laws and in their administration. The great lesson to be derived from the contemplation of the past is the obligation to vigilance and exertion, in order that what has been won at such fearful cost may not, at the dictation of civil or ecclesiastical tyrants, be wrested from our grasp.

Among the victories to which allusion is here made must be accounted the inclusion in the French Declaration of Rights (1789), of the statement that "the right to punish is limited by the law of necessity;" also the declaration by the Revolutionary Assembly in 1791, that "penalties should be proportioned to the crimes for which they are inflicted, and that they are intended, not merely to punish, but to reform the culprit." That Assembly relegated to oblivion the antiquated notion that imprisonment was merely a preventive measure, by which the prisoner was to be securely held until he could be suitably punished; and it substituted for it the principle that imprisonment, in varying forms and degrees, is itself a penalty of crime.[1] It therefore dis-

[1] "The Ordinance of Louis XIV., August, 1670, is the latest criminal code prior to the Revolution of 1789. The only penalties then permitted (and which are mentioned in the Ordinance) were: (1) Death; (2) torture; (3) the galleys for life, or for a term of years;

pensed with all the corporal punishments which the Monarchy had cherished and so fearfully abused. Credit must also be given it for having been the first governmental body to recognize police surveillance without imprisonment, as an adequate remedy, in many cases, for social disorder.

TORTURE.

The real use of torture was not to punish a criminal, though it was sometimes employed for that purpose. (The Julian law, for instance, prescribed it for lese-majesty). It was intended, first, to extort from a person accused a confession of guilt, and second, to force him to disclose the names of his accomplices. It was

(4) banishment for life, or for a specified term; (5) flogging; (6) the *amende honorable;* (7) reprimand. Besides these principal penalties there were others which were accessory, such as branding, the *carcan*, the pillory, dragging in the mud, and confiscation; also lighter punishments, like fines, etc. But nowhere is imprisonment mentioned in the light of a punishment; never was it so inflicted. The prison was simply a place where the accused was held for trial, and convicts were held until the execution of sentence. The Constituent Assembly adopted imprisonment as the principal, though not the sole, basis of the criminal code. It made of this form of punishment, which was never to be for life, a new feature in criminal jurisprudence. It created the penitentiary system in France; that is, a system founded upon the amendment and rehabilitation of the prisoner. In the penalty of *la gêne* (absolute solitude), authorized by the 14th section of the Code, may be seen the germ of "solitary confinement" practised, later, at Philadelphia. The National Convention made but slight changes in the Code. The Empire, however, overthrew it bodily, by re-establishing imprisonment for life, confiscation, and branding, and by replacing *la gêne* by relegation or exile. The Code of 1810, nevertheless, contains a more advanced provision than does the Code of 1791, in giving to judges discretionary power to determine the duration of sentence within minimum and maximum limits. It also contains a provision for the surveillance of discharged convicts, which did not occur to the Assembly or the Convention." — *Moreau-Christophe.*

an incident in judicial procedure. The theory of its advocates was that the knowledge of one's own guilt is guilty knowledge, and to compel him to give it up was only an act of justice; while any evidence which he might have in his possession touching the misdeeds of others was the property of the state, which it had the right to recover by any and all means at its command. This is indicated by the Latin word for torture, *quæstio;* and even the English word in its etymological derivation suggests the same thought — torture is the twisting (*torsion*) from its subject of his guilty secrets. Traces of this theory survive in the French practice of interrogation of the accused by the judge. English law is more humane, since it admits the right of the accused to refuse to answer questions which tend to his incrimination; but there is reason to believe that what the courts are forbidden to do, the police, especially the detective branch of it, does not scruple to attempt, in the United States, without warrant of law.

Like flogging and other corporal chastisements, torture was originally applicable exclusively to slaves. A slave had no rights superior to those of a military captive. Parrhasius, when about to paint his picture of "Prometheus Bound," purchased a captive, whom he subjected to torture, in order that he might the better serve as a model, by his contortions and facial expression. A story is told of a Roman noble, whose lampreys were greatly praised at a dinner given by him; he explained that they had been fed on the flesh of slaves, killed and thrown into the water for that purpose. The testimony of a slave was valueless in Rome and in Athens, unless extracted from him by torture. Paul escaped scourging,

to make him confess his crimes, at the hands of the chief captain in Jerusalem, only because he could substantiate his claim to be a freeborn Roman citizen.

Torture is an institution at least as old as Egypt. A passage in the book of Esther makes it probable that it was in use in ancient Persia. Moses forbade it, in the injunction that no proof of guilt should be accepted by the Hebrew courts, except the concurrent testimony of two witnesses. But it was practised in Greece. A rescript of the Emperor Augustus authorized it in Rome, on the express ground that it was useful as an agency for the discovery of truth, *ad veritatem requirendam.* Tacitus relates an anecdote of Tiberius worth reproduction here. A nephew of Pompey was accused of magic, but protested his innocence. With a view to ascertaining the fact, his accusers demanded that his slaves, who were familiar with his habits, should be put to the question, in order to induce them to tell what they knew. A Roman law, however, forbade the testifying of slaves against their master. Thereupon the Emperor freed these slaves, at the cost of the public treasury, in order to enable them to appear as witnesses in the case. The only criticism which it occurs to Tacitus to make upon this transaction is that the Emperor was not justifiable in thus circumventing the law. Since torture can not well be practised in public, it was not suited to the Teutonic nations, whose tribunals were popular assemblies. It did not find its way, therefore, into northern Europe, or at least was not expressly recognized as legal, before the reign of Charles V., who, with his successor, Francis I., is credited with the revival of the old Roman jurisprudence. These monarchs

established by law, in the sixteenth century, all that is included under the general title of torture. They recognized and adopted the Roman distinction between ordinary and extraordinary penalties; the former were named in the code, and could be ordered by judges upon the testimony of witnesses or upon the plea of guilt by the accused; but, if these were wanting, they could proceed to the question, and, if the sufferer confessed under duress, a larger discretion as to the punishment to be adjudged against him was vested in them.

The right to put accused persons to the question was a prerogative of the grand seigneurs; like other nameless privileges which they enjoyed, it was for them an appanage of rank, a means of vengeance, and an agency for extorting tribute.

There is much evidence that the resort to this more than questionable method of proof was never in England common as it was upon the continent. Hallam, the constitutional historian of England, says that "the common law neither admits of torture to extort confession, nor of any penal infliction not warranted by a judicial sentence;" but adds, "This law, though still sacred in the courts of justice, was set aside by the Privy Council under the Tudor line. The rack seldom stood idle in the Tower, for all the latter part of Elizabeth's reign." As some of the investigations made into prison management prove, jailers sometimes made unlawful use of torture to extract information from prisoners.

There were in the Tower two chambers, both of which were regarded as excellent places in which to seclude a man, in order to stimulate him to serious reflection. One of them was called "Little Ease," because it was

too small to admit of his standing, sitting, or lying in it with any comfort to himself; the other was the "Dungeon of Rats."

The principal forms of torture were as follows. First, the cord, which was sometimes applied simply by tying the thumbs together as tightly as possible with whipcord. Generally, however, by the cord is meant the violent jerking of which there is an illustrative engraving in John Howard's book on the "State of Prisons." It is sometimes called the strappado (French *estrapade*).[1] The victim, having submitted to have his hands firmly tied behind his back, was raised by a rope and pulley to a height, then suddenly dropped and caught, so that his joints snapped like a whip. To render it more excruciating, weights were sometimes attached to his feet; Howard saw five different weights in the prison at Zurich, the heaviest of which was one hundred and twenty pounds. Savanarola and Machiavelli were both subjected to this test. The common time for continuing it was an hour, and very few who endured it that long ever regained the use of their limbs.

The thumbscrew I need not describe. A model of it may be seen in the Tower. It was occasionally used, as we use handcuffs, for securely holding prisoners.

In the boot and wedge, the legs were tied and wedges driven between them. The boot was sometimes made of parchment, put on the feet wet, and then dried before a fire.

The rack was introduced into England by the Duke

[1] Francis the First, that bloody tyrant, with diabolical ingenuity, combined the strappado with burning alive, in the execution of Protestants, at a place in Paris formerly known as the Estrapade.

of Exeter, and for that reason was popularly known as "Exeter's Daughter." It was a machine for stretching all the limbs at once, until there was danger of their giving way at the weakest joint, whatever that might be.

The "Scavenger's Daughter" was named after the Lieutenant of the Tower, its inventor, whose name was Skevington. By its use the knees were drawn up to the breast and the feet to the thighs, where they were held by iron bars; the sufferer was practically rolled up like a ball; the blood was forced from his nose and mouth, and not unfrequently the ribs and breastbone were broken.

Burning with heated pincers was called the hooks.

A form of torture peculiar to Italy was the *veglia*, by which the point of a diamond was made to press against the end of the spinal cord of a prisoner seated upon a plank in which the diamond was securely imbedded; the result was convulsions.

All the various pains which have been described under this head were borne, it must be remembered, not necessarily by the guilty, but by the innocent. The question preparatory was designed to make its subject commit himself; the question preliminary to make him commit some one else. The former was applied before, and the latter after, judgment. Attempts were made to guard so powerful an engine of oppression against abuse, by restricting the number of persons who could put it in operation, the conditions of its application, the extent to which it could be used in individual cases, and the crimes for whose discovery, proof, or punishment it was lawful to make use of it. But it was placed in the

hands of both the civil and the ecclesiastical courts, in an age of ignorance, superstition, and tyrannical abuse of class privilege.

That torture is contrary to humanity and religion, as well as to sound principles of law, is now apparent enough. But the controversy over it lasted for centuries, and at times raged with fury. The great Roman lawyer, Ulpian, opposed it as unsatisfactory and dangerous. The Christian Fathers, Tertullian and Augustine, denounced it. The early Christians persuaded the Emperors not to inflict it during Lent. Many of the Popes condemned it: so did the Protestant sect of the Waldenses; so did the Encyclopædists. Clement V. said that the withholding the sacraments from persons under torture was a damnable outrage. Montaigne said that torture was both cruel and useless. Nevertheless, so deeply engrained in the thought of men were the conceptions which underlay it and gave it vitality, that no writer could give it a death-blow, until Beccaria published his little tractate on "Crimes and Punishments," at Milan, in 1764.

His book was the sensation of the day. It was translated into all the modern languages; he was invited to Paris; but the best of all was that his views were adopted by governments, and that he lived to see torture abolished in France, in Austria, in Russia, and to a large degree in Italy. It lingered in some of the petty Italian states until 1831 — a little more than sixty years ago. We are apt to accord the palm to Howard of England as the greatest of prison reformers. Beccaria did not, like Howard, spend his life and his fortune for the amelioration of the unhappy state of those in bonds. But he

perhaps did even more for the world, in winning its ear and altering the whole current of its criminal jurisprudence.

THE INQUISITION.

Torture was so pre-eminently an ecclesiastical weapon with which to combat heresy, for the glory of God and the eternal welfare of human souls, that it would be to give but an imperfect idea of the change which has come over the spirit of the race, if no mention were made of the Inquisition. There were two very distinct periods in the history of the Inquisition, one of which covered two hundred years, from the close of the twelfth to the close of the fourteenth century, and the other began with the creation of the Spanish Inquisition, ten or a dozen years before the discovery of America by Columbus. The first of these periods need not detain us long. The Council of Verona in 1184 condemned the tenets of the heretical sects called the Albigenses and Waldenses, found in the south of France. Peter of Castelnau and Raoul, two Cistercian monks, were sent thither to compel them to abjure their errors. They associated with themselves the great Saint Dominic, founder, in 1215, of the Dominican order. Innocent III. was his friend and patron. They invaded France on their sacred mission in 1204. At the memorable siege of Alby, July 22, 1209, (which made forever infamous the name of Simon de Montfort, the general who conducted the siege and permitted the massacre which followed), the soldiers asked Dominic by what sign they could distinguish the heretics from the faithful; he replied, "Spare none! the Lord will know his own." The church could not itself put its enemies to death, without despite to the spirit of for-

giveness by which it was supposed to be animated; but the Emperor Frederic II., under the menace of excommunication by Pope Honorius III., assumed the protectorate of the Inquisition, and ordained that heretics condemned by it should be put to death or otherwise punished, according to their crimes, by the secular power. The Emperor, when it was too late, repented of his weakness, but Innocent IV. had by that time given it permanent life and united it to the Holy See. It was during this period of our story, that the Templars were suppressed, and De Molay, the grand master, burned alive, near the spot where now stands the statue of Henry IV., in Paris. The old Inquisition, however, existed largely in name; its pretensions were resisted; and, although it obtained a foothold in Italy, Spain, France, and Germany, it had, when Ferdinand and Isabella were married, become dormant everywhere except in the Papal States.

About the middle of the fifteenth century, a young man, a student in the University of Salamanca, had the misfortune to fall violently in love with a beautiful Spanish girl named Cazilda, who had engaged herself to a Moor. In a street brawl which ensued, the Moor disarmed the Spaniard, who took a solemn vow to be revenged, not only upon the Moor and his lady-love, but upon the accursed race to which his successful rival belonged. They fled to Granada, where for a time they were safe. This passionate student subsequently made the acquaintance of Father Lopez, the Superior of the Dominican order in Spain, who perceived the brilliancy of his talents, his inordinate ambition, the ardor of his spirit, the intensity and tenacity of his will, and deter-

mined if possible to secure him for the church. Becoming intimate, the secret of his undying hostility to the Moor was revealed to his new friend. Lopez, failing in the effort to cure him of a hopeless attachment and to seek peace of mind in a monastic career, suggested to him that possibly, not being of noble blood, he might gratify his longing for vengeance even more effectually in the priesthood than as a simple layman. The young man became a Dominican friar. In the convent library he discovered the ancient records of the former Inquisition. At the risk of his health and his life, he devoted his days and nights to poring over them. They excited his admiration, aroused his ambition, fed the spirit of persecution by which he was consumed, and decided him to become an inquisitor.

But how to arrive at his end? He went to Toledo, where he distinguished himself as a pulpit orator, attracted the attention of the Court, and finally became the tutor and confessor of the young Isabella, the future Queen of Spain. He instilled into her infant mind his own fanatical intolerance. On the day of her first communion, he extorted from her an oath upon the crucifix, that she would, on coming to the throne, either convert the heretics within her kingdom or exterminate them.

In 1481 Isabella, whose marriage with Ferdinand had united the crowns of Aragon and Castile, received a visit, after her coronation, from Lopez, the confessor of Ferdinand, in company with her own confessor, the celebrated Torquemada, the student of whom I have spoken. The war with the Moors had just terminated with the conquest of Granada. The conspirators per-

suaded the youthful royal pair to make formal application to Sixtus IV., then Pope, for the re-establishment of the Inquisition in Spain, and for the appointment of Torquemada as grand inquisitor. A bull to that effect was granted, and the principal seat of the tribunal was fixed at Seville, in the château of Triana. Torquemada aspired to be a Cardinal. Ferdinand desired to enrich the crown by the confiscation of the immense wealth of the Moors and the Jews. Thus avarice and the love of power, those fatal human passions, were the foundation of the modern Inquisition.

Torquemada lost no time in beginning his bloody work. During his first year, he burned nearly three hundred heretics in Seville alone, and two thousand more in the other cities and provinces of the kingdom. Outside of the walls of Seville he caused to be erected a stone scaffold called the *Quamadero ;* at the four corners of the base were four hollow statues, representing the four great Hebrew prophets, into which the condemned were forced, when fires were kindled around them, which were kept up until their bones were reduced to ashes. It is not very many years ago that the remains of this scaffold were still visible.

The work of Torquemada was effectively seconded by Ximenes, the Prime Minister of Ferdinand and confessor of the Queen, who saw in the Holy Office the means of creating, through intimidation, a party which would, in case of conflict, support the Minister against the throne. Purely personal and political motives were enough to make him the protector of the Inquisition.

The Jews, the Moors, and even many Christians began to fly in terror from Spain. Thereupon, emigration

was declared to be a crime, and the emigrants were burned in effigy. In 1492, however, the King issued a decree banishing the Jews.

In 1483 the Inquisition was made a permanent institution. The sole power over it reserved to the Pope was that of confirming or rejecting the nominations of the grand inquisitor.

The grand inquisitor presided over the supreme council, composed of five members, one of whom must be a Dominican. The fiscal procurer formulated the charges for trial; the qualificator passed theological judgment upon them; the sergeant-major or marshal of the court was called the alguazil; and there were secretaries, a receiver, and two relators. The familiars of the Inquisition were spies. Their number was beyond computation, their names were unknown; they were called familiars, because they were looked upon as members of one great family. The Inquisition was supported from the outside by two lay societies, one of which, the Brotherhood of the Cross, was composed of nobles; the other, the Holy Hermandad, of the commonalty. They constituted a sort of authorized ecclesiastical police or militia.

The jurisdiction of the Inquisition over ecclesiastical offences was unlimited; it could try some civil offences; no religious faith was a bar to its jurisdiction. It took jurisdiction of individuals in four ways; by common fame, the reports of spies, secret delation, and open accusation. The tribunal had the right to make arrests everywhere, even in churches. Its prisoners were instantly lost to the world; their friends were forbidden to utter an inquiry as to their fate. Immured in cells

till summoned to appear, when they asked of what they were accused, the cold and formal reply was, "You ought to know." Before being put to the question, they were granted three "audiences of monition," in which the arts of finesse and cajolery were exhausted, to entrap them into some admission which might be used against them or against others. At the first audience, they were threatened; at the second, seduced by promises; at the third, interrogated as to their genealogy, family history, and knowledge of theology. The pretended counsel assigned them rarely brought to the attention of the court any evidence in their favor, but did his best to coax them to make confession.

There were three grades of prisons of the Inquisition, all under one roof. The public prisons were for those not charged with any crime against the faith; the intermediate for the discipline of employees of the holy office not charged with heresy. Both of these were open to visitors. The secret dungeons were subterranean; they lay beneath the marble floor of the palace, were both dark and damp, and not a word was permitted to be spoken in them, either by the prisoners or by their jailers.

In the torture chamber, the three principal forms of coercion were by the cord, by water, and by fire. In the second of these, which has not been described, the body was extended at full length upon a frame so constructed as to bend it slightly backward and to elevate the feet above the head; the face was covered with a wet cloth, kept wet by constantly falling drops of water which had to be swallowed, in order to prevent suffocation. At the same time, the cords by which they were

bound were continually drawn tighter by a tourniquet, so as to cut into the flesh until it bled. Torture by fire was both with hot irons and by slow roasting in front of flames. If a prisoner confessed, he was burned alive and his property confiscated. This torture chamber was removed from sight and hearing, and hung with black or with crimson. On the wall of the one at Nuremberg, when Howard visited it, was inscribed what he justly calls the "jingling verse:"—

"*Ad mala patrata hæc sunt atra theatra parata.*"

A crucifix hung behind the inquisitor's seat. The executioners were masked. All the proceedings were surrounded with mystery, more deeply to impress the imagination of the ignorant.

Llorente, the historian of the Inquisition, who was its chief secretary, records that the number of its victims amounted, in the two centuries during which it lasted (1481–1808) to 341,021, of whom 31,912 were burned alive, and 17,659 were burned in effigy, or their dead bodies exhumed and committed to the flames; for the Inquisition claimed jurisdiction beyond the tomb.

In a history of the Inquisition published at Madrid in 1598, its author, Louis de Perama, an inquisitor, traces its origin to the creation. He claimed that Adam and Eve were the first heretics and God the first inquisitor. God was alone in the garden with Adam, when he asked him what he had done; this is the warrant for secret interrogation. Adam's punishment was threefold: exile from Eden, deprivation of his former right of property in Paradise, and loss of dominion over the brute creation; thus he justified the claim of the Inquisition to pronounce

judgment of banishment, confiscation of goods, and loss of rank. That the *auto-da-fe* is a divine institution, is proved by the flood and by the rain of fire which destroyed Sodom. Inquisitors have existed in all ages; Sarah banished Hagar and Ishmael, Isaac deprived Esau of his inheritance, the Levites were the first inquisitorial council, and Jesus Christ himself caused the death of Herod.

The Emperor Napoleon abolished the Inquisition in 1808, as an infringement upon his own imperial prerogative and upon the authority of the secular courts. A graphic account of the destruction of the Inquisition at Madrid in 1809 was published in an obscure Chicago newspaper, the *Western Citizen*, by Colonel Lemanouski, a Polish officer in the Imperial Army, who was an eye-witness of the scene which he describes. The soldiers of the Inquisition made a desperate resistance, and the walls had to be battered down with the trunks of trees. An entrance having been effected, the inquisitors denied the existence of the secret torture chambers; but, on flooding the marble floor with water, a crack was discovered, through which the water ran in a stream. Repeated thrusts with bayonets in the neighborhood of this crack resulted at last in touching a concealed spring, the flying open of a marble slab, and the revelation of a stairway. In the dungeons reserved for prisoners for life many prisoners were found, of both sexes, all in a complete state of nudity, some of them reduced to a state of imbecility, and in various stages of starvation. Powder was placed under the palace, the walls and towers were thrown down, and the Inquisition of Madrid came to a perpetual end.

The Congregation of the Holy Office still exists in Rome, but, although the canon law asserts the power of inquisitors to constrain even civil magistrates to cause the statutes against heretics to be observed, and to compel the execution of sentence, the Catholic Dictionary states that "nowhere does the State assist the Church in putting down heresy; it is therefore superfluous to describe regulations controlling a jurisdiction which has lost the medium in which it could work and live."

CHAPTER VI.

DAWN OF THE REACTION.

THE view given, in the last chapter, of the forms of cruelty practised by mankind in dealing with military captives, slaves, and criminal offenders (between all of whom there was a great resemblance in legal status), would be incomplete without some figures tending to show also the extent of the evil. In the nature of the case, no complete or exact statement is possible. A few figures culled almost at random from various sources may be submitted, without expressing any opinion as to their trustworthiness, further than that they presumably give a truthful but inadequate idea of the recklessness of human rights displayed in past ages. Llorente's statement as to the Inquisition has been already quoted. The ancient laws of France authorized the infliction of the death penalty for more than one hundred distinct offences. A French judge, named Rémy, at Nancy, boasted that he had burned eight hundred in sixteen years, and that sixteen committed suicide in one year rather than run the risk of falling into his hands. In the first quarter of the sixteenth century, the public executioner of Nuremberg put to death eleven hundred and fifty-nine persons. In the seventeenth century, it is said, the Parliament of Bordeaux burned more than six hundred sorcerers in a single year. Seventy thousand executions took place in England during the reign of Henry VIII. These are merely sample instances.

At last the world became weary of shedding blood. It was not possible, in view of the growth of human knowledge, the progress of invention, and increased facilities for travel, to say nothing of the multiplication of books and newspapers, that the atrocities of former generations should longer be regarded with popular indifference. The old legislation pushed its blind fury to the point of confounding the innocent with the guilty. Wives and children perished with their husbands and fathers; posterity was robbed for the enrichment of titled and clerical oppressors; if a slave was guilty of theft or murder, hundreds were sometimes slain for the offence of one. Revenge stopped not with the human species; animals, and even inanimate objects, were formally accused, tried, convicted, and sentenced. Punishment assumed *post mortem* and hereditary forms. Men were executed in effigy. In its administration the grossest inequality was sanctioned by law. There was one penalty for the rich, another for the poor; one for the slave, another for the freeman; one for the noble, another for the commoner. Crimes which were known to the law were said to be ordinary; but judges could add to the list others which were extraordinary and unprovided for, in the punishment of which they had large discretionary powers.

The truth of the adage that "crime thrives upon severe penalties" is demonstrated by the experience of mankind, before the genius of Christianity and of modern science taught the lesson of greater tolerance, so imperfectly learned, that even now rash and ill-informed men often express the opinion that what is needed for the repression of crime is severer penalties; as if we

could hope ever to rival what has already been tried in this direction.

Among the distinctions recognized by European criminal law in the Middle Ages was that between the clergy and laity. By benefit of clergy is meant the exemption of priests from trial by the civil courts. The right of appeal to the ecclesiastical courts, however, existed only in case of a capital charge; but so many offences were capital, that this was equivalent to exemption from civil jurisdiction in a large majority of instances. The ordinary demanded the delivery of the clerk by the civil authorities, who at first surrendered him before trial; but later, the ordinary could take him even after trial, and he had the right to clear himself by compurgation. A jury of twelve, all of them priests, was impanelled; he took a solemn oath in their presence that he was innocent; and they solemnly swore that they believed him. This was the easy process by which he escaped punishment for his crimes, if it was not for the interest of the church that he should suffer. Originally, the evidence that he was a clergyman consisted in his tonsure and his habit; but, in an age when the only persons who knew how to read were those in holy orders, or studying for the same, the practice gradually grew up of allowing any one who could read to plead benefit of clergy. Thus an institution than which nothing can be imagined more unfair, came, in the providence of God, or in the order of nature, to be the occasion of the overthrow of the very injustice of which it was a manifestation. Teaching letters to a prisoner by his jailer, in order to qualify him to claim benefit of clergy, was a punishable act. A man who had once been released upon this plea was

not entitled to offer it a second time; and, as has been stated in order to make sure that he should not do so without being recognized, it was the custom to brand him on the fleshy part of his thumb. But an act approved in 1706 admitted all persons to benefit of clergy, upon their own application, which was the virtual repeal of this distinction.

The abolition of branding was one of the first indications of the dawn of a more humane spirit in society. It was due to the recognition of the fact that a thief branded with the letter "T" was thereby wholly debarred from all subsequent opportunity to make an honest living.

Attention has been called to the distinction between felonies and misdemeanors, the former including all capital offences. At the common law, felonies were few in number: the entire list included, probably, no more than homicide, rape, burglary, arson, larceny, robbery, and mayhem. But others were made capital, from time to time, by statute; and those thus added were made felonies "without benefit of clergy." By that was meant that persons convicted of them could not appeal to an ecclesiastical court and so escape death. The result was a great increase in the number of executions. The human mind finally revolted against such indiscriminate and useless slaughter. Magna Charta forbade the compulsory exile of any Englishman. But multitudes of prisoners under sentence of death were given the alternative, of which they hastened to take advantage, of voluntarily leaving the realm, if pardoned. Herein was the germ of English transportation.

On the other hand, the increase in the number of

capital crimes rendered it certain that the severity of punishment of misdemeanors would be gradually relaxed.

Little thought had yet been given to the possibility of making simple incarceration, without torture or any form of physical suffering, serve as a penalty of crime. Prisons existed from time immemorial. They are mentioned in the Old Testament. Joseph was thrust into Potiphar's prison, Samson into that of the Philistines, and Jeremiah's dungeon into which he was let down by ropes is never to be forgotten. But the ancient prison was only a place of confinement in which men were kept waiting the final disposition to be made of them. Samson, for instance, had been blinded before his imprisonment, or in the prison, and there he was punished by making him grind corn. Ulpian, the Roman lawyer, expresses this principle in saying, "*Carcer enim ad continendos homines, non ad puniendos haberi debet.*"[1]

The famous Cretan labyrinth was a prison: it was said to have but one inconvenience and but one merit — no one could ever, unassisted, find his way out of it. The Mamertine prison was for many years the only prison in ancient Rome.[2] Afterward, a deep, dark dungeon was constructed beneath it, called the Tulliana, because it was built by Tullius.[3]

[1] *Carcer* is by some etymologists supposed to be a derivative of *coërcere*. Others connect it with the Hebrew *carcar*, to bury.

[2] "Felices proavorum atavos, felicia dicas
Sæcula, quæ quondam sub regibus atque tribunis
Viderunt uno contentam carcere Romam."

JUVENAL, Sat. iii.

[3] "Est in carcere locus quod Tullianum appellatur, ubi paullulum ascenderis ad lævam circiter duodecim pedes humi depressus. Eum

Sir James Stephen is unable to find any mention of imprisonment as a penalty in Anglo-Saxon law, though a friendless man or a stranger who could give no surety, at his first accusation, was required to go to prison "and there abide till he goes to God's ordeal." The first English prisons were merely wooden cages commonly constructed in the king's castles. The barons, however, had private prisons for offenders sentenced in the manorial courts, and the bishops had ecclesiastical prisons.

The dungeons of the Middle Ages were situated either at the top of a tower or in a cellar or subcellar. They were not separate structures, but were apartments in a castle, fortress, palace, hospital, or convent. The habit of despots is to cover up tyranny by the use of euphemisms, which is illustrated by the fact that the ancient prisons were rarely given that name, but were called by some other.

The history of famous prisons and the lives of famous prisoners fill many books. It is not possible to go very deeply into that.

The Tower of London was originally a fortified palace, erected by William I. and used as an arsenal. Except the historical reminiscences which it suggests, the most interesting thing about it to-day is the wonderful collection of old arms and armor which it contains. It really consists of several separate structures, the White Tower, the Bloody Tower, and the like.

muniunt undique parietes atque insuper camera lapideis fornicibus juncta sed inculta tenebris, odore fœda atque terribilis ejus facies est. In eum locum postquam demissus est Lentulus vindices rerum capitalium quibus præceptum erat laqueo gulam fregere." — SALLUST, *Catil.*, cap. 55.

The Bastille was originally one of the city gates of Paris — a fortified gate, flanked by two towers. It was known as the Porte Saint Antoine. The fortress which replaced it was erected in the fourteenth century, although the last two towers of the eight of which it was composed were not completed until the middle of the sixteenth century. Hugo Aubriau was the first superintendent of construction, and he was also its first prisoner. It was made a prison of state in 1417. When the boundaries of Paris were enlarged, to include the Faubourg Saint Antoine, the Bastille ceased to be of further value as a fortress and became purely a prison. It was here that the Man with the Iron Mask was confined. The French kings in the seventeenth and eighteenth centuries were in the habit of signing letters of *cachet*, by which men and women could be sent to prison without trial and there held during the royal pleasure: many of these letters were signed in blank and distributed to the nobles at their request — a very handy thing to have, if one wished to dispose of a troublesome friend or enemy. This prison witnessed the death of many such, forgotten by all but their nearest friends. It was captured by the mob and destroyed, July 14, 1789. The commander in charge defended it with great bravery, and wished to blow it up rather than surrender, but the Swiss guards would not let him do so. It was taken only after eight cannon had been brought to bear upon it. This was the beginning of the French Revolution. Most of the apartments were octagonal in form: there were five grades of them, the worst being underground and the next worst at the top. Some of the dungeons contained iron cages, which were looked upon

then with greater horror than now. They were invented by the Bishop of Verdun, who subsequently, by an act of poetic justice, occupied one of them. The *oubliettes* (so called from the verb *oublier*, to forget, because the prisoners consigned to them were meant to be forever forgotten) had deep pits in them concealed by a trap-door, through which a prisoner fell into mud and starved, or into water and drowned, or upon a wheel set with knives which cut him to pieces. Louis XI. is said to have killed not less than four thousand victims in these *oubliettes*.

Another famous French prison was the Conciergerie, which is still used as a prison. It was an appendage of the Palace of Paris, and its name denotes that it was the abode of the *concierge* or royal porter and door-keeper, whose office was to keep people in as well as to keep them out. Its origin is lost in antiquity. From one of its towers was given the signal for the massacre of Saint Bartholomew. It has twice been burned, the last time in 1776. The cell from which the ill-fated Marie Antoinette went to execution is here shown to visitors. From this prison went also the man who was the soul of the Reign of Terror, with whose own death it came to an end: Robespierre, who, strange to say, in the Convention had proposed the abolition of capital punishment, and thus allied himself to Marat, who had written a book against it.

Before being transferred to the Conciergerie, Marie Antoinette, with Louis XVI. and their two children and the children's saintly aunt, had occupied a tower of the Temple, during their long martyrdom. This was the strongest of all the Parisian prisons. It was once

the palace and treasure-house of the Templars. After their dissolution in 1312 by order of Pope Clement V., it had been turned over to the Knights of Malta, whose priory it became, on condition that the towers should be used as a prison of state, which was the case until the founding of the Bastille in 1370. It was a prison under the Directory, and under Napoleon till June, 1808; it was torn down by order of the Emperor in 1811.

For-l'Évêque (*forum episcopi*) was, as its name suggests, an episcopal or ecclesiastical prison. It was built about the year 1161, with dungeons and *oubliettes* under the towers. There was in it also a torture chamber. It was several times rebuilt, during the six or seven centuries that it was used. In 1674, after a long struggle between the Bishop and Louis XIV. over the question of secular or ecclesiastical jurisdiction, Louis seized it and converted it into a secular prison, specially devoted to the retention of prisoners *de cachet.* It ceased to be employed as a prison in 1780, and has since been destroyed.

Bicêtre, now a lunatic asylum, once the residence of a bishop, with a long and curious history of changes of owners and of functions, was, at the date of the Revolution, a mixed establishment, partly a prison, partly a hospital, partly an almshouse. From here it was that convicts were sent to the galleys. Their departure was a sight much frequented by the great, who enjoyed the spectacle. About noon, they were brought from their cells to be chained, an operation which occupied the blacksmiths until dark. Twenty-six men were attached to each chain by triangular collars riveted around their necks. The spectators, moved by compassion,

made them presents of money. They lay all night upon the straw in the court of the prison, because, being chained, they could not be taken back to their cells; and in the morning they started for the coast in great wagons which held the whole twenty-six, placed in two rows of thirteen each (unlucky number!) back to back. The last convoy of this character left Bicêtre in 1835.

The word Salpêtrière, the name of another French prison, suggests saltpetre, and in truth it was so named because Louis XIII. built it for the manufacture of gunpowder, though he called it the Little Arsenal. After it had ceased to be used as an arsenal, it became for a time a hospital for beggars — a sort of mediæval wayfarers' lodge without the labor test. Louis XIV. converted it into a prison for women. On the fourth of September, 1789, a committee of the Assembly appointed to empty the prison of its inmates entered it for that purpose. The poor creatures there confined were rejoicing at the prospect of liberty, and all the more since a few were in fact set free. But presently a woman was brought before the committee, sitting as an irregular court of justice, who was branded on the shoulder with the letter "V" for *voleur* or thief. She was at once taken into the yard, where a company detailed for that purpose fell upon her and massacred her. Thirty-three women were thus murdered that day in cold blood. The last of them, who had no suspicion (as none of them had) of the fate of those who had preceded her, had dressed herself with care in the clothes she wore when she was committed — a red gown, silver buckles in her shoes, gold earrings — and, when they

undertook to carry her down the stairs, she made such a desperate resistance, that she was killed on the staircase. The massacre of the inmates of the prisons of Paris by the revolutionists is one of the bloodiest pages in history. What happened here occurred at many other prisons, with added circumstances of horror.

These were a few of the famous prisons of Europe in former centuries. Others were the Castle of Spielberg, in Austria, where Frederick the Great made such fearful efforts to crush the indomitable Baron Trenck, whose escapes and varying fortunes constitute one of the most exciting romances in the annals of tyranny; the Leads of Venice; and the Seven Towers of Constantinople. In the latter there was a cell called the bloody cell, with a pit under it called the well of blood.

English literature has familiarized us with English prisons of the olden times, especially with the Marshalsea, the Fleet, and the Newgate. It was the custom of those days for every court to have a prison of its own: thus the Fleet pertained to the jurisdiction of the Star Chamber, and the Marshalsea to the King's Bench.

In the sixteenth century there began to be erected here and there houses of correction or workhouses, not punitive nor reformatory but rather repressive in their character and purpose, designed for the detention not of criminals so much as vagabonds. They were more common on the Continent than in England.

There was in England a palace near Blackfriars called St. Bridget's Well, which was given to the city of London by Edward VI., as a lodging house for tramps and was converted into a house of correction. It is from

the corruption of this title in the mouths of the common people, that the word Bridewell now applied to a city workhouse has been evolved.

Parliament, in the reign of Elizabeth, ordained that there should be a house of correction in every county for persons described by Mr. Pike in the following words: —

"There were the practisers of unlawful games — the forerunners of our modern skittle-sharpers, welshers, and gaming-house keepers. There were persons who 'used physiognomy, palmistry, or other abused sciences, tellers of destinies, deaths or fortunes. There were 'minstrels not belonging to any honorable person of great degree,' unlicensed buyers of rabbit-skins, sellers of aqua vitæ, petty chapmen, tinkers, pedlers, jugglers, bear wards, fencers, unlicensed players in interludes. There were begging sailors pretending losses at sea, and unable to show a license from two justices living near the place where they landed. There were Irish men and Irish women 'of the sorts aforesaid,' who lived by begging. There were hedge-breakers and petty pilferers of wood. There, too, were scholars of Oxford or Cambridge that went about begging, 'not being licensed by the chancellor or commissary.'"

Begging in old times was a licensed avocation. The example was set by the begging friars; but the privilege allowed them was gradually extended to persons not in religious orders. I quote again from Mr. Pike: —

"Before the Norman Conquest a man who had no lord was to be accounted a thief: in the reign of Elizabeth a man who had no lord and no master was to be accounted a vagabond. In addition to the classes already mentioned, the houses of correction were filled with 'idle laborers that would not work for the wages taxed, rated and assessed by the justices of the peace,' and 'strong, idle persons having no land, money, or lawful occupation.'"

The gypsies, or Egyptians, as they were formerly entitled, were treated as felons; and so were all persons seen in their company.

Still more mixed was the collection of criminals, vagabonds, and unfortunates in the workhouses of the Continent. At Bruchsal, as late as the year 1750, there were gathered under one roof not only felons and misdemeanants, but lepers, lunatics, orphans and even unemployed handicraftsmen. The workhouse system, which was the middle term between the ancient and modern prison, required for its full development about a century and a half — say from 1550 to 1700. This period was marked by the creation of workhouses or houses of correction (the terms are interchangeable) in London in 1550; in Amsterdam in 1588, and in the same year a hospital in Nuremberg was changed into a spin-house; in Lübeck and Bremen in 1613; in Berne in 1615; in Hamburg about 1620; in Basle in 1667; in Vienna and Breslau in 1670; in Lüneburg in 1676; in Florence in 1677; and in Munich in 1687. Nearly all of them were in northern Europe, and in the Germanic states. That in Munich was intended for disobedient children, frivolous and insolent men, lazy boys and girls, stupid and refractory apprentices, day laborers who shirked their work — in a word, for such as would otherwise loaf and beg, or at least do nothing useful — in order that they might be brought to a better life, or, if that was beyond hope, placed where they could not mislead and injure others. The spin-house founded by Peter Rentzel in Hamburg in 1669 deserves special mention, because, "having observed that the exposure of petty thieves and prostitutes in the pillory tended to make them

worse instead of better," he built this establishment "at his own cost, to the glory of God and for the salvation of souls, where they might by labor and religious instruction be reclaimed both for time and for eternity." He thus anticipated the benevolent intentions of Pope Clement XI. in founding the hospital of St. Michael at Rome.

John Howard, in his record of his travels, has much to say of this new system. Among other things he mentions many of the occupations in which prisoners were engaged. In Holland the men were rasping logwood in the rasp-houses; the women in the spin-houses he found carding, spinning, knitting, and weaving; all of them being set to work, as he says, upon the principle, "Make men diligent, and you will make them honest." When the invention of mills for grinding logwood rendered this form of handwork no longer profitable, the manufacture of woollen cloth was substituted for it. Other Dutch prisoners were seen by him making fishing-nets, or sorting coffee-berries, or weaving coarse carpets, or sacks for the East India trade. In Germany the felons, called galley-slaves (though without water there could be in fact no galleys) were at work upon the streets or the fortifications, or in the chalk quarries. At Nuremberg, they polished lenses for spectacles; at Bayreuth, they polished marble. In Belgium he observed the manufacture, in the prison at Brussels, of wall-paper; in Portugal, of rope and of lace; in Spain he saw convicts burning lime. At Naples, they were making shoes. At Milan, the prison was noteworthy for the variety of trades taught: shoemaking, tailoring, blacksmithing, cabinet-work, wagon-making, wood-turn-

ing, leather-dressing, rope-spinning, nail-making, hand-painting on gauze, and many others. At Zürich, some prisoners, of the trusty sort, were hired out to private citizens by the day.

A not uncommon bas-relief placed over the entrance to a workhouse in Germany he describes, which can only be taken as an indication of the rise of the conception of a new and better use of prisons in the centuries to come. At Mayence, there was such a design, which represented a wagon drawn by two stags, two lions, and two wild boars, with an inscription to the effect that, if wild beasts can be tamed and induced to submit to the yoke, we must not despair of reclaiming the vicious and teaching them habits of industry. In a similar bas-relief at Amsterdam, tigers were substituted for stags, and the wagon was loaded with logwood.

With the creation and multiplication of workhouses, the foundation of the modern prison system was firmly laid. The motive that gave birth to them was humane: they were really a more or less unconscious protest against the undue severity with which minor offences had been pursued. It was but a step to the belief that the punishment of felonies was also excessive. It was not possible to employ prisoners in profitable labor without regular hours and a code of rules: thus was laid the basis of prison discipline. The classification of prisoners was a necessity, at their work and at other times, because of the admixture of classes, of ages and of sexes. Separate quarters had to be provided for women, for debtors, and for the sick. This led to the adoption by degrees of better structural arrangements, and prison architecture began to assume a distinct form.

Imprisonment, which the writers of the first half of the seventeenth century characterized as of all known punishments the most wretched and the most injurious, a form of slavery and a living sepulchre, changed its aspect, wherever the new ideas found a congenial soil in which to take root and germinate.

It would be an injustice to human nature, however, not to recognize the fact that in all ages, even the darkest, there were voices raised in angry protest against cruelty even to the guilty, and hearts and hands which were at the service of the unfortunate, even where their misfortunes were the direct result of their own misconduct. It is a duty and a pleasure to emphasize this thought. The Church has always insisted upon the obligation to visit those in prison and to remember those in bonds as if bound with them. The Council of Orleans, in 549, declared it to be the duty of all archdeacons to visit prisoners every Sunday, regardless of their crimes. The Confraternity of Saint John the Beheaded, better known as the *Misericordia*, the origin of which is shrouded in the impenetrable mist of antiquity, the Confraternity of Saint Mary at the Cross, which was founded at the time of the plague in Italy, in 1348, and the Confraternity of Death, created at Modena, in 1372, were religious brotherhoods organized for the amelioration of the sad fate of the imprisoned and the tortured, by a variety of charitable ministrations, but chiefly by attending them on the scaffold, seeing that their dead bodies were given Christian burial, and offering masses for the repose of their souls. At first, visitation of prisoners was almost exclusively an act of mercy to those under sentence of death, possibly be-

cause the greater part of those under arrest were in truth sent to the stake or the gallows. But when the new day dawned, of hope for the hopeless and help for the helpless, prison catechumens and chaplains were appointed, who ministered to all prisoners; they were provided with necessary medical attendance; and skilled artisans were employed to teach them the trades at which they were required to work.

With the classification of prisoners in prison came also, at no great distance in the rear, the classification of prisons. Thus the first workhouses, rude and imperfect as they were, miserable as was their construction and government, yet marked the point of transition from that now obsolete system of criminal jurisprudence to one which, imperfect as it is, and much as it retains of indefensible theories, at least gives promise of something vastly better in the near future. May Heaven speed the day!

CHAPTER VII.

THE REFORMATION OF THE CRIMINAL.

When the reaction took place against retribution and repression, it was inevitable that the thoughts of men should turn to the reformation of the offender. There has never been a time when this duty has not been insisted upon by sages and moralists. The Hebrew prophet ascribed to the Almighty the question: "Have I any pleasure at all that the wicked should die?" Seneca said that punishment is designed to protect society by removing the offender, to reform its subjects, and to render others more obedient. Plato held that the proper end of punishment is not merely to render to the guilty their due, but at the same time to make them better: he so far anticipated the course of modern reform in his dream of an ideal as to propose the construction of three grades of prisons — one for persons under arrest, one for minor offenders, and one for great criminals. The intermediate prison he would have named *Sophronisterion*, because it was to be a place for teaching wisdom and continence. Aristotle defined punishment to be "the specific of the soul," and said that law should be "wisdom without passion." Saint Augustine, the venerable bishop of Hippo, in pleading for mercy to certain heretics, who had murdered two priests, declared that, however atrocious crime may be, it should not awaken anger and the desire for revenge, but should

rather be looked upon as an inward malady which it is our duty to heal. Pope Boniface VIII. anticipated the famous dilemma of Mr. Frederick Hill, "reformation or incapacitation," in one of his edicts, in which he said that, while the prison is to be regarded as a place of detention rather than of retribution, yet the Church would not disapprove the incarceration of confessed or convicted clerical offenders for life or until they should give evidence of repentance.

But these were the utterances of individuals. They were in direct opposition to the heathen spirit; and the Christian spirit has never made more than a partial impress upon social and legislative institutions, even in so-called Christian lands. Yet it is the reformatory idea, which distinguishes the penitentiary era of criminal jurisprudence.

The honor of having inaugurated that era is generally accorded to Pope Clement XI., who, when he founded the Hospital of Saint Michael, at Rome, in 1704, inscribed over the door: "For the correction and instruction of profligate youth, that they who when idle were injurious, may when taught become useful, to the State." And in the hall where the boys were at work he placed the inscription, "*Parum est coërcere improbos pœnâ nisi probos efficias disciplinâ,*" which Howard thus renders: "It is of little advantage to restrain the bad by punishment, unless you render them good by discipline." This was a formal and official admission, by the highest authority, that the entire system of retribution and repression had proved a practical failure. The erection of this juvenile reformatory institution, therefore, is the landmark which divides two civilizations

or two historical epochs. But Saint Michael's was not a prison pure and simple. It contained a department for two hundred orphan boys, and other departments for aged and infirm men and women, of whom there were over five hundred, while the number of criminal boys was only fifty. For the latter the plan of the institution provided sixty single cells, in three tiers, one above the other, ten cells in each row, on the two sides of a spacious hall lighted by three large windows, one at the end and one at each side. This corridor was used as a common workroom by day: in the centre hung a placard with one word, "Silence!" These were the essential features of what, a century later, was called the Auburn system.

The reformatory idea made but slight progress until the day of John Howard, whose name shines illustrious in the annals of humanity and blazes like a star upon the roll of the saints in heaven. The best biography of him is by Hepworth Dixon. He was born at Hackney, now a suburb of London, Sept. 2, 1726. The humbleness of his origin should be an encouragement to every young man possessed of the apostolic spirit, that enthusiasm for humanity which supplies the place of noble birth and even of distinguished talents, if joined to the capacity for persistent and thankless toil. Howard's father was in trade, a dissenter, and, though he retired from business on a competency, he was not what would even then be regarded as man of large wealth. The great prison reformer was but a dull scholar: he never succeeded in acquiring much education, and to the day of his death he was unable to spell the English language correctly. Two friends

assisted him in the preparation of his book on the "State of Prisons:" one of them reduced his mass of memoranda to order, and the other gave them the requisite literary form. While still a boy he was for a time apprenticed to a grocer. His mind was narrow, his health infirm; but he was intense, religious, firm but kind, somewhat eccentric, and, above all, single-minded and devoted. His first visit to the Continent was as a valetudinarian, seeking for health, before his first marriage. He was twice married and twice a widower. In 1755, after the death of his first wife, he sailed for Lisbon in a vessel named the Hanover, having conceived in his mind a project for the relief of the sufferers by the great earthquake in Portugal that year. The Hanover was captured by a privateer, and he was for a week a prisoner in a horrible dungeon at Brest. This was no doubt the place where the seed of interest in prisons and prisoners was sown in his philanthropic soul. For fifteen years it lay dormant. During that period he married again, built model cottages for the tenants upon his estate at Cardington, near Bedford; his only son was born (who afterwards died a lunatic); he buried his second wife, with whom he had lived seven years, and made another journey for his health. Soon after his return, he was made Sheriff of Bedford and placed in charge of the jail in which, a hundred years before, John Bunyan had written the "Pilgrim's Progress." This was in 1773. While we were fighting for national independence, he carried on, single-handed, a war against the oppression of the guilty and the innocent, against precedent, prejudice and self-interest, in which he laid down his life.

As Sheriff of Bedford, his attention was soon drawn to the fact that prisoners who had not been indicted, whose accusers had failed to appear against them, and also some who had been acquitted, were detained for want of money to pay the fees allowed by law to the jailer and other officials. He asked the county justices of the peace to make an allowance to the jailer in lieu of fees. They demanded a precedent for charging the county with this expense. Thereupon he rode into several of the adjoining counties in search of one, but learned that the same injustice was practised there as at home; and, looking into the prisons, he witnessed scenes of sorrow which daily he burned with intenser zeal to alleviate. In order to become more thoroughly informed as to its nature and extent, he visited most of the county jails in England. Seeing in two or three of them some forlorn creatures whose aspect was more than ordinarily deplorable, he inquired why this was so, and was informed that they had recently come from the Bridewells. This furnished him a new subject for investigation, and he made a second tour of England. The worst evil he encountered was jail fever, concerning the prevalence of which he was examined at the bar of the House of Commons in March, 1774, and the speaker publicly thanked him for his evidence. From this time forward his journeys in the interest of prison reform lasted almost without intermission until his death, of the plague, January 12, 1790, at Cherson, in Russia, where he is buried.

During these sixteen years of public service at his private expense, he visited almost every known country then accessible to European travellers. The first foreign

prison that he sought to inspect was the Bastille, to which he could not gain admission. He passed through an attack of jail fever in France. In Spain, he requested to be confined for a month in the prison of the Inquisition at Madrid, but was told by one of the secretaries that "None come out under three years, and not then without taking the oath of secrecy." He sailed from Smyrna to Venice in a plague-infected ship, that he might learn by personal experience all about the lazarettos, in which he felt as deep an interest as in the prisons. The vessel was attacked by Mediterranean pirates, and with his own hand Howard fired the gun which put them to flight. His death occurred on his sixth tour of the Continental prisons and hospitals, when he was on his way for the first time to Turkey and the Orient. His statue was the first that was erected in the Cathedral of Saint Paul in London.

In the history of prison reform, the two greatest names are those of Howard and Beccaria; one an Englishman, one an Italian; one a Protestant, the other a Catholic; one a commoner, the other a nobleman. Beccaria was younger than Howard by about ten years, but he launched his book against torture ten years before Howard's first publication. Beccaria was a thinker, a student, who worked among his books; and, though not a lawyer, his attack was directed against criminal law. Howard left his home and his native land, to pursue his studies in the field; his knowledge of the subject was gained by original observation, and his attack was aimed at the practical abuses in the administration of the law. Howard's personal vanity led him to suppose himself much more of a physician than he really was; but the

vanity of Beccaria lay in the direction of political economy. Beccaria was seduced from the strict orthodoxy of a devout Catholic by the brilliant speculation of the Encyclopædists, and he accepted the illusive and fallacious doctrine of the social contract. Howard never swerved from the simple faith of an evangelical Christian; religious speculation had no attraction for him; and his unconscious philosophy was that of Bacon, for he followed, without knowing it, the inductive method. His spirit was less philosophic but more scientific than that of Beccaria, more patient, more laborious, more indefatigable. Beccaria had the languid, indolent temperament of a southerner; he lacked the lifelong consecration to a single purpose which distinguished his Anglo-Saxon contemporary; he was animated more by ambition and less by a sense of duty. Both were sincere, courageous, and undaunted by danger or opposition. They had many views and sentiments in common. Both condemned the needless infliction of pain, and disapproved of the death penalty, of life imprisonment, of imprisonment for debt, and of long imprisonment awaiting trial. Both saw the utility and necessity for labor and of education for convicts. But the genius of one was destructive, his eyes were turned toward the historic past, and he dealt to a dying outrage the finishing stroke of the gladiator. The eyes of the other were prophetically directed to the future, his genius was constructive, and he laid with skill the enduring foundations upon which the modern world has erected the prison system of the nineteenth century. They never met. Howard knew of Beccaria's book, for he quotes it: whether Beccaria was aware of Howard's existence I do not know.

But both were the product of the revolutionary age in which they lived, when thrones were tottering and despotism was giving way to political freedom and equality; and both were chosen instruments in the hand of God for the elevation of the race by the better recognition of universal human rights.[1]

A fitting close to this chapter will be a brief account of the evils in prison construction and management, in England, at the end of the eighteenth century.

Howard complained of the private ownership of prisons by the Lords of Manors and by the Bishops. Private pecuniary interest has always been a fruitful source of oppression, whether this interest has taken the form of blackmail or of profits upon convict labor. In the Bishop of Ely's prison, the luckless captives lay upon their backs, upon the floor, with spiked iron collars around their necks, and heavy iron bars across their

[1] Beccaria was a thinker, Howard an actor; hence Howard more impressed the popular imagination, and has been more frequently idealized in a literary way, as in the following poetical panegyric: —

> From realm to realm, with cross or crescent crowned,
> Where'er mankind in misery are found,
> O'er burning sands, deep waves, or wilds of snow,
> Mild Howard journeying seeks the house of woe.
> Down many a winding step to dungeons dank,
> Where anguish wails aloud, and fetters clank,
> To caves bestrewed with many a mould'ring bone,
> And cells whose echoes only learn to groan,
> Where no kind bars a whispering friend disclose,
> No sunbeam enters, and no zephyr blows,
> He treads, inemulous of fame or wealth,
> Profuse of toil, and prodigal of health;
> Leads stern-eyed Justice to the dark domains,
> If not to sever, to relax their chains;
> Gives to the babes the self-devoted wife,
> To her fond husband liberty and life.
> Onward he moves; disease and death retire;
> While murmuring demons hate, they still admire."

legs. (A similar account is given of an ancient castle in Transylvania, where, as late as 1840, prisoners were laid upon their backs every night, with their feet fast in stocks, so that they could not move). He reprobated the toleration of the practice of garnish, footing, or chummage, as it was variously called, the nature of which can be inferred from the command given by the jailer to each new arrival, "Pay or strip." He saw, in the rules which authorized the collection of fees from prisoners, on sundry pretexts, a fruitful occasion of wrong; and he desired the abolition of the fee system and the payment of fixed salaries instead. He found men and women not only ragged but actually dying of starvation. In some Bridewells no food was furnished. The keepers, on applying to the magistrates for an order to supply it, had been silenced by the brutal answer, "Let them work or starve." In many jails food was not given to debtors, who were dependent on charity for the continuation of their existence. Prisoners who had money were required to buy supplies from the jailer, who kept a tap, where not only food but drink was sold, at an exorbitant price. The sale of beer by jailers was prohibited, under George III.; but the statute was evaded by giving permission to debtors to sell. The profits of the tap, together with the fees and garnish money, enabled the jailer to pay rent to the owner of the prison, if it was a private prison. The Duke of Portland charged eighteen guineas a year for a prison of one room, with a cellar under it. The office of Warden of the Fleet was granted by Elizabeth to Sir Jeremy Whichcot and his heirs forever. Later, the patent was set aside, on the ground of its descent to

persons not qualified to execute the duties of the position, and a grant of life was made of it to Baldwin Leighton. After his death, it was given to one Huggins and his son, for the term of their lives, in consideration of £5000 paid to Clarendon, the Lord Chancellor. Huggins & Son sold out to Bambridge & Corbett, whose cruelty to prisoners for the sake of extorting money from them resulted in a Parliamentary inquiry and their having to stand seven trials for murder and another for theft. The Warden of the Marshalsea rejoiced in an income of £3000 or £4000 a year. One method of extortion was to iron prisoners heavily and make them pay to have their fetters removed or lightened. The bedding furnished without charge was as scanty as the food: prisoners often lay upon the straw, which was not changed and finally wore into fine dust. Outsiders were freely admitted, even loose women to spend the night, if money could be thus made by the jailer. There was no privacy which was not bought. All mingled freely, of both sexes; and poor debtors, like the Vicar of Wakefield, had their families with them as permanent residents of an abode the atmosphere of which was as foul and obscene as any upon earth. Even in the Bridewells, the object of whose establishment seems in many instances to have been forgotten, it often happened that no occupation was provided. The time was spent in gaming, fighting, dawdling, recounting real or fancied criminal exploits, planning fresh depredations, and horse-play. A favorite amusement was the holding of a mock court.[1] The

[1] Mr. Buxton, in his "Inquiry" (1818) describes the trials in Newgate, as follows: "Their code is a subject of some curiosity. When

sanitary condition of the prisons was worse, if possible, than their moral state. They lacked ventilation and drainage, there was usually no water supply, they were poorly lighted, and they were abominably filthy. Some of them were badly overcrowded. In the majority, there was no medical attendance; in some there was medical care of felons, but not of debtors. Malignant typhus fever, called jail fever or ship fever, since those were the places in which it was most likely to originate, was generally prevalent. Howard affirmed that more prisoners were destroyed by this fever than were put to death by all the public executioners in the kingdom. The disease was not confined to prisons, but was propagated by contagion in the courts. The "Bloody Assize" was held in Oxford Castle in 1577. All who were present, including the Lord Chief Baron, the Sheriff, and about three hundred more, died within

any prisoner commits an offence against the community, or against an individual, he is tried. Some one, generally the oldest and most dexterous thief, is appointed judge; a towel tied in knots is hung on each side of his head, in imitation of a wig. He takes his seat, if he can find one, with all form and decorum; and to call him anything but 'my lord' is a high misdemeanor. A jury is then appointed, and regularly *sworn*, and the culprit is brought up. Unhappily, justice is not administered with quite the same integrity within the prison as without it. The most trifling bribe to the judge will secure an acquittal, but the neglect of this formality is a sure prelude to condemnation. The punishments are various; standing in the pillory is the heaviest. The criminal's head is placed between the legs of a chair, and his arms stretched out are attached to it; he then carries about this machine; but any punishment, however heinous the offence, may be commuted into a fine, to be spent in gin, for the use of the judge and jury."

A somewhat similar moot court was tolerated by the local authorities in the county jail at Denver, Colorado, some years ago, and the United States court was obliged to put an end to it.

forty hours. In 1730, at Taunton, several hundred, among whom were the Chief Baron and the Sheriff, died from jail fever contracted at the Lent Assize there held. The odor in some of the prisons that he visited was so fetid and so clinging, that he had to travel on horseback on account of it, not being able to endure the scent of his clothing in the confined atmosphere of a coach. It is greatly to his credit, that, with no medical education, he should have divined the cause of this fever and the remedy for it, and that his representations with reference to it resulted in its entire suppression in England within seven or eight years from the time that he entered upon his labors.

His strictures upon the non-residence of jailers and the infrequency of jail deliveries were also well-deserved; and he fearlessly held up to the English people the superiority in so many particulars of the Continental prisons, especially in those of cleanliness and of industrial employment of prisoners. The prisons of Holland, he said, were so clean that one would scarcely believe them to be prisons. But one advantage the English prisons could congratulate themselves upon; there was no chamber of torture in any of them.

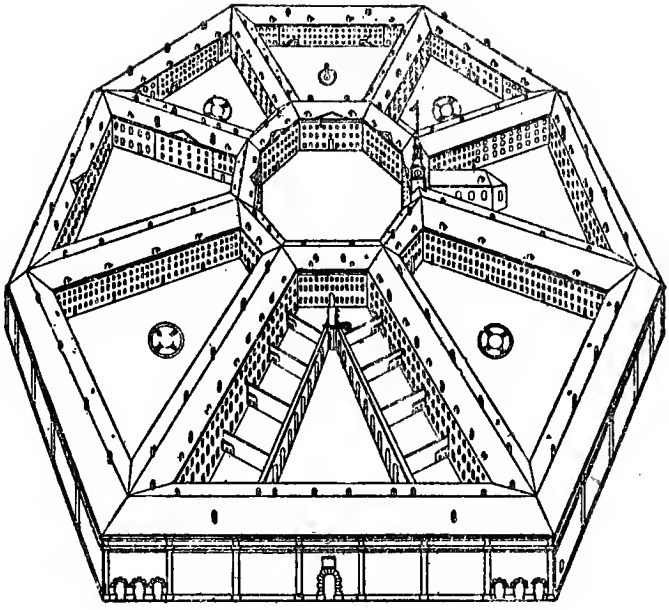
It is evident that the reformation of prisons had to precede, in the logical and historical order, the reformation of prisoners. Probably the same is true, at the present time, of the slums in our great cities; their physical must precede their spiritual transformation.

CHAPTER VIII.

THE PENNSYLVANIA AND AUBURN SYSTEMS.

A PRELIMINARY hint as to prison architecture had been afforded in the cellular construction of the Hospital of Saint Michael at Rome. But the real beginning of that art, in its influence upon prison construction in our time, was the building, by Vilain XIIII., of the prison of Ghent. Vilain was a man of extraordinary capacity and character: a gentleman by birth, who was Burgomaster first of the town of Alost and afterward of the town of Ghent. A Deputy of Flanders, the Empress Maria Theresa made him a Viscount, in recognition of the great work he had done in the reform of the Flemish fiscal system.

There is a natural connection between mendicity and crime. Habitual hunger develops and fixes the criminal character. All men must recognize the similarity between the characteristics of a petty criminal and those of a vagrant. There are men who beg when they cannot steal, and who steal when they cannot beg. The beggar and the thief are alike lacking in foresight, in the power of application, in continuity of thought, in personal, moral responsibility. Both are constitutional liars. Both feel that the world owes them a living. Neither sustains any permanent relation to society at large, except one of antagonism to social order; and often, in the case of both, there is wanting any attachment to the soil.



The Prison of Ghent.

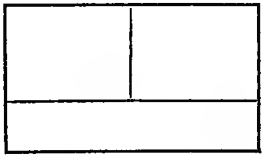
General Perspective View (from a Model by Braemt.)

After the breaking-up of the feudal system, mendicity was very prevalent in Europe. The Crusades helped materially to develop it. It received a fresh and mighty impulse, on the return of the Crusaders. The Church did not frown upon it: the mendicant friars were a familiar mediæval sight, and they set a bad example for imitation by men who needed not to take any vow of poverty and who would not take the vow of chastity or of obedience. At the close of the eighteenth century, Flanders was overrun by an idle and vicious horde of supposed paupers, more than half of whom were impostors, who devastated the country: cutting and burning timber, robbing the peasants, and committing depredations which called for severe chastisement. But severe measures are rarely adopted anywhere for dealing with tramps; and still more rarely are they enforced. In 1771 the Deputies of the Estates of Flanders prayed Vilain to formulate and submit for their adoption a plan of relief. In April he responded to this appeal in a memoir which bore as its motto two familiar scriptural quotations: "If any man will not work, neither let him eat," and "In the sweat of thy brow shalt thou eat bread." He suggested the erection of a *maison de force* or workhouse, the cost of which he estimated at six hundred thousand florins. This proposition was discussed by the Provincial Assembly, adopted in July, approved by the Empress of Austria in January, the necessary tax was levied, and in 1773 the prison was partially finished and occupied. The dates are important, for the period of the American Revolution was that of so many of the movements which, in their entirety, formed the beginning of prison reform.

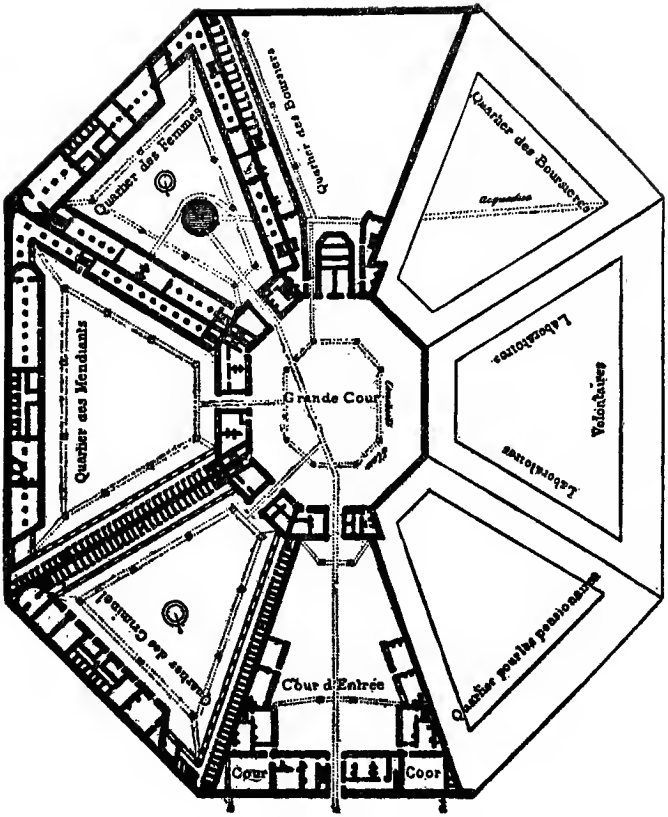
Before submitting a drawing of the outline of this famous structure, the remark is in place at this point, that the elements of prison architecture are very simple. The first prison was a single cell, usually at the top or bottom of a tower, lighted by a narrow window if at all. It may have been square, circular or octagonal, but is fairly represented by a square, as follows: —

Two cells would look thus: —

Suppose a corridor added, on one side: —



Or placed in the centre: —



The Prison of Ghent.

Ground Plan (from the Memoir by Vilain xiiii.)

These are the elementary principles of cellular construction. There will be a corridor or there will be none; if there is a corridor, it will be in the centre or on one side. If on one side, it may be on two or three or four — the principle is the same. If the corridor is in the centre, the cells will have outside windows, and the corridor will be lighted from the roof or by one or two end windows. If the cells are in the centre, the corridors will be lighted, and the cells will not. The arrangement of cells in long rows, or in tiers one above the other, does not change the principle; neither does the size of the cells, nor the manner in which they are furnished.

In the Hospital of Saint Michael, at Rome, the corridor was in the centre, as at Philadelphia; but in the prison of Ghent, the cells were in the centre, and the corridors next the outer walls, as at Auburn. This is, I think, the oldest historical example of that mode of construction. Another novelty in its plan was the arrangement of the departments or wings. The outline of the building was octagonal, with eight trapezoidal courts between eight wings radiating from an octagonal centre, enclosing an octagonal central court, making nine courts in all; the wings were connected at the extremities. This will be better understood by reference to the architectural plan on the opposite page, taken from Howard's book. The stellar form given to this prison may have influenced the architecture of the penitentiary at Philadelphia,[1] and the placing of

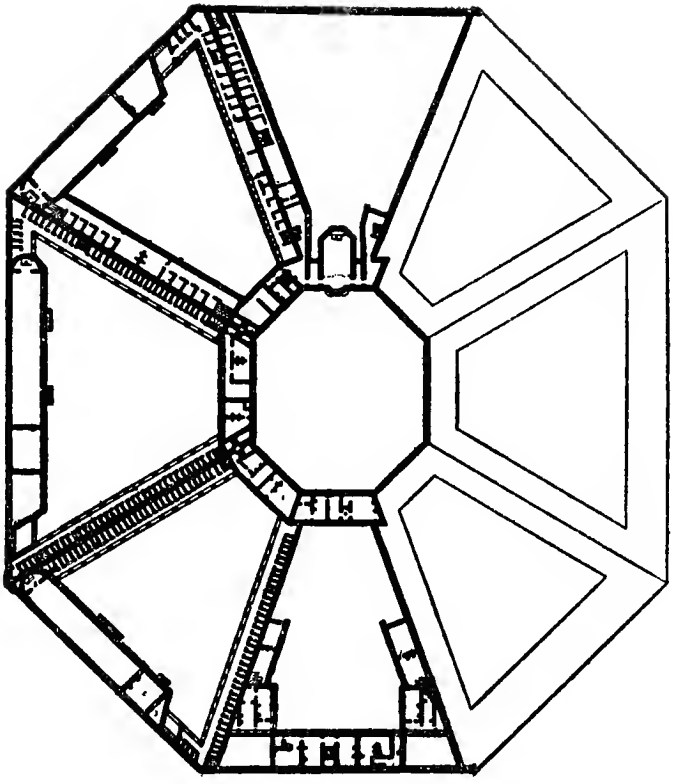
[1] Sir Edmund F. DuCane, in "The Punishment and Prevention of Crime," following no doubt other writers in whose accuracy he supposed that he could have confidence, asserts that the radiating

the cells that of the prison at Auburn, so affecting the direction of the movement for prison reform in two ways at once, as we shall see.

From the book in which Vilain gives an elaborate account of the prison at Ghent, its aim and spirit, its organization and rules, and the organization of labor in it (with many interesting observations on the nascent manufactures of his day, in a state which has ever occupied an honorable pre-eminence as an industrial centre, which throw more or less light upon the origin of the factory system), it is clear that the architectural merits of the prison constitute its smallest claim upon our attention. It was remarkable, however, for the intelligent appreciation which it exhibited of the essential correspondence between structure and function, and for the skill with which the mutual adaptations of the two were experimentally wrought out. The design seems not to have been fully executed: one-half of it was never built.

Vilain has justly been entitled "the father of modern penitentiary science." In the first place, his prison had for its avowed aim the reformation of those committed

plan of prison construction was first adopted at Rome, in the erection of *San Michele*. That the distinguished head of the English prison system has not himself carefully studied the subject at first-hand is evident, because he expresses a doubt whether John Howard had seen *San Michele*, though the great prison reformer gives a description and partial drawings of it in his work "On the State of Prisons.' Howard does not intimate that it was built on the radiating plan Nor does Signor M. Beltrani Scalia, in his book "Sul Governo e sulla Riforma delle Carceri in Italia;" the latter, on the contrary, says that *San Michele* was "all under a single roof." What evidence is there that the plan of the Prison of Ghent was borrowed from Rome? None, so far as the author knows. If there is any, he would be glad to have his attention drawn to it.



The Prison of Ghent.

First and Second Story Plan (from the Memoir by Vilain xiiii.)

to it. Then he believed in industry as the primary agency for reformation of the criminal character. The labor which he regarded as reformatory was not, like the English crank and treadmill and shotdrill, perfunctory physical exercise of a semi-punitive, semi-sanitary sort; nor was it, like picking oakum, as nearly unproductive as can well be imagined. Furthermore, he recognized and insisted upon the importance of trade instruction, with a view to putting the prisoner in condition to earn an honest living, when discharged. Finally, he appreciated the importance, in the selection of prison industries, of choosing, as far as practicable, such as would come least into competition with free labor on the outside. For this reason he rejected several excellent business offers to introduce certain lines of manufacture into the prison, one of which was the manufacture of tobacco, which, besides, he regarded as demoralizing to the inmates. He sought to find trades not followed in Flanders, but which, if adopted, might prove profitable to the Flemish people. In fact, there was a great diversity of avocations followed in the prison, among which may be mentioned: carding, spinning, weaving, shoemaking, tailoring, carpenter-work, and the manufacture of wool and cotton cards. To encourage prisoners to work, he allowed them a percentage of their earnings, and the opportunity to do overwork. Part of their earnings was their own, to expend in the prison; part was retained, to be given to them at their discharge, so that they might not be penniless and on that account relapse into crime. The rasping of logwood was reserved as a penal pursuit.

Few men have ever better expressed the nature and

end of discipline than he, in the first of sixty-three police regulations framed for the government of prisoners: "Discipline consists in the exact execution of every order given by a superior officer, without question or remark; and in the punishment of every act of disobedience, in order to achieve what the sentiments of honor and probity are insufficient to accomplish." This he expected to secure by constant vigilance on the part of guards, and by the gradation of disciplinary punishments, according to the degree of offences and the amenability of the thoughtless or unruly to admonitions and warnings, culminating in the lash, solitary imprisonment, and the prolongation of the term of incarceration, at the rate of a week of added detention for each day in the dungeon.

Every prisoner had a cell to himself at night: the work-shops were in common, and meals were served at a common table.

He provided a resident physician and a resident chaplain.

Proper attention was paid to the classification of prisoners. Felons were separated from misdemeanants and vagabonds, there was a distinct quarter for women, and he designed to make special provision for children also. His purpose being to combat mendicity, he allowed the commitment of children of the very poor by their parents, at a moderate charge; the directors subscribed a fund at their own expense, the interest of which was to be applied to the payment of a schoolmaster.

Commitments for grave offences were by commutation of sentence from corporal or capital punishment

to simple imprisonment. Vilain objected to life sentences, as tending to produce despair and therefore insubmission; and to short sentences, as not sufficient to teach the prisoner a trade, and therefore not reformatory. He wanted a minimum sentence of at least a year. He thought it unfair to authorize by law the detention of a convict after the expiration of his term of sentence, by way of penalty for misconduct in prison, and not to admit of a reduction of sentence as a reward for good conduct; but remarked that, since the right of pardon and commutation of sentence is a royal prerogative, the prison authorities ought to be empowered and required to recommend convicts for pardon from time to time, at their discretion. This was a sort of prophetic approval of what is now known as the indeterminate sentence, or at least of our "good time" laws.

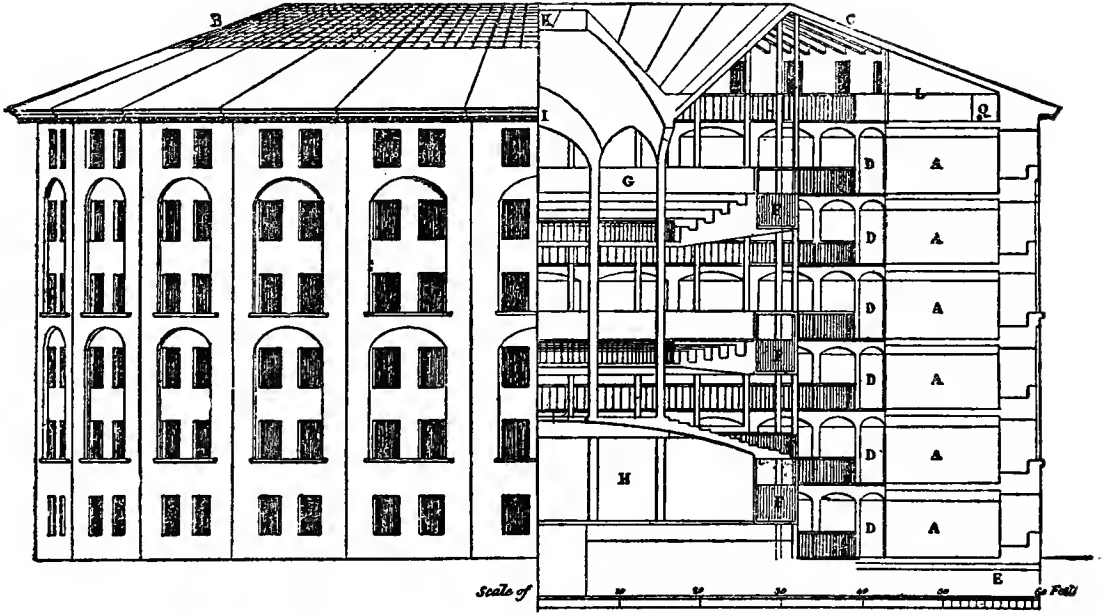
Such enlightenment in advance of his age, is truly wonderful. It is not surprising that the prison at Ghent excited Howard's warm admiration. On the occasion of his third visit, in 1783, he observes: —

"I found a great alteration for the worse; the flourishing and useful manufactory destroyed; and the looms and utensils all sold, in consequence of the Emperor's too hasty attention to a petition from a few interested persons. That which ought to be the leading view in all such houses is now lost in this house."

Maria Theresa, whose noble ambition was to reform every part of the imperial administration of Austria, had been succeeded by Joseph the Second, who had almost an insane hatred of all reform. The pecuniary interest of court favorites or the friends of such favorites outweighed in his mind all considerations of the welfare of prisoners and of the advantage to society to

be expected from their reformation. A few years later, Flanders was occupied by the French, who inaugurated the system of contract labor in this prison, so that it never fully recovered its former prestige as a reformatory institution.

Nevertheless, it was the birthplace of the new penitentiary dispensation. The first signal instance of its influence upon human thought was the publication, in 1787, of a series of letters by Jeremy Bentham, then in Russia, to a friend in England, entitled "Panopticon, or the Inspection House." The Panopticon seems to have been the joint invention of himself and his brother, who was an architect, employed to build a Russian prison (which was not erected, because of the war which just then broke out between Russia and Turkey); and the distinguished English publicist, seeing an advertisement that a house of correction was about to be erected somewhere in England, thought that a modification of the Russian plan would answer for that. A comparison of the drawings for the Panopticon with those for the prison of Ghent will show that they have little in common, except the general form of a circular structure. The Panopticon was to be in effect a gigantic lantern, lighted by a glass roof, with cells next the outer wall, facing the centre, and an apartment for the Inspector in the middle, so that the interior of each cell would be at all times visible from a single point. The scheme had little merit, in comparison with its defects; and, although efforts were successively made to have it adopted in Ireland, England, France, and the United States, it was everywhere rejected. A committee reported adversely upon it in New York, in 1811. It can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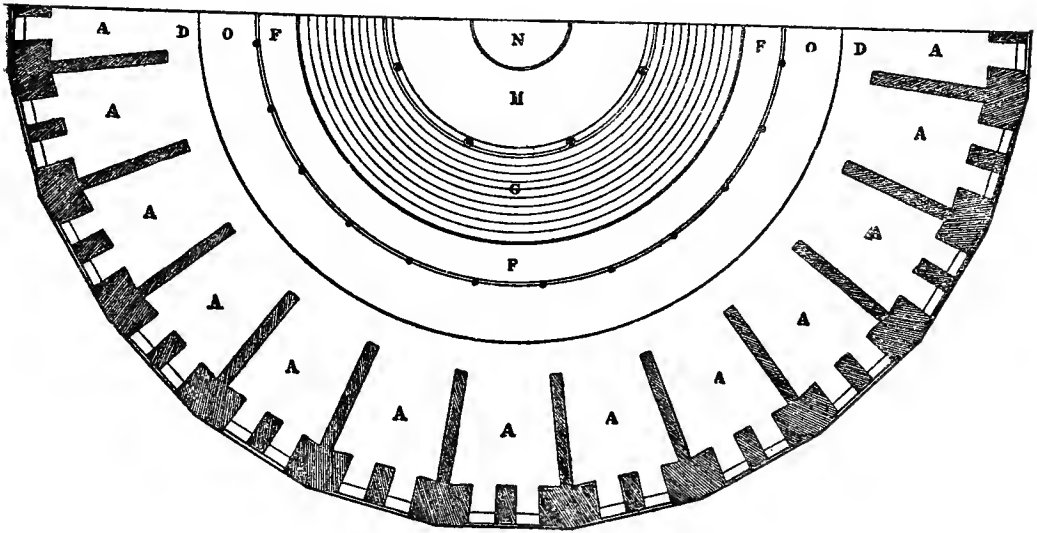


The Panopticon.

Jeremy Bentham's Design for a Penitentiary. (Ground Plan, Elevation and Cross Section.)

be regarded in no other light than as one of the curiosities of prison history.

There is, however, little doubt that the design of the Eastern Penitentiary of Pennsylvania was suggested by that of the prison of Ghent.[1] Both are radiating prisons, with wings extending in various directions from a common centre, like the spokes of a wheel or the arms of a windmill. In the Philadelphia prison, the cells are next the outer walls, instead of in the centre, as at Ghent; and the connecting structures at the extremities are lacking, as if the felloes of a wheel had not yet been fitted to the spokes. The resemblance in other respects is quite striking.

William Penn, the founder of the colony which bears

[1] When the idea of the penitentiary system dawned upon the world, there were no precedents by which to be directed in its development. In the matter of architectural construction, the friends of an improved prison discipline were divided between the "radiating" and the "circular" plans. The Panopticon was strictly circular; the Eastern Penitentiary at Philadelphia was strictly stellar. Between the two were the Prison of Ghent, built before either of them, and the Millbank Penitentiary, in London, built after them both. Ghent was an octagon, with eight surrounding triangles; Millbank was a hexagon, with six surrounding pentagons. The arrangement of cells however, at Ghent, was predominantly radiating; at Millbank it was predominantly circular in principle, though not really circular in form — each of the pentagons, was, so to speak, a modified circle, that is, in the words of Mr. Holford, the prison was "so built as to enclose its courtyards within its perimeter." Archbishop Whately said, as late as 1832, "I do not think there is any one system which, in the present state of our knowledge, we are authorized to fix on as decidedly preferable to all others; it would certainly be the most modest, and I think it would also be the wisest, procedure, to give a fair trial to each of several different ones, which have been well recommended." He was not speaking of architecture, but the remark illustrates the uncertainty which prevailed as to the best course to pursue. In fact, the radiating system of construction is still highly esteemed, after trial; the circular plan has been abandoned.

his name, had been a prisoner in England, because of his religious belief; he had, as a Quaker preacher, visited Holland, and had been greatly impressed by the Dutch workhouses. The denomination to which he belonged has always been noted for its benevolent spirit: the Friends condemn war and slavery and capital punishment. When Penn framed a criminal code, he reduced the number of capital crimes (which in his native country aggregated between one and two hundred) to one, namely, wilful murder. The Quakers took up the cause of prison reform, and made a religion of it. The Philadelphia Society for Relieving Distressed Prisoners was the parent of all modern prison associations. It was organized in 1776, suspended operations during the War of Independence, and was reorganized in 1787, when the war had ended, under the new title of "The Philadelphia Society for Alleviating the Miseries of Public Prisons."

There was at that time a jail in Philadelphia, called the Walnut Street Jail,[1] the condition of which was wellnigh intolerable. It was a congregate prison, without discipline: the first time that any clergyman attempted to conduct religious services in the yard, the jailer, as a precaution against riot and to insure the preacher's personal safety, had a cannon brought into

[1] The old jail at the corner of Third and Market Streets having become insufficient, the Legislature, in 1773, authorized the county commissioners to build a new prison at the south-east corner of Sixth and Walnut streets, a description of which may be consulted in the *United States Gazette* for October, 1835. A new prison in Arch street was provided for in 1803. In 1831 both the Walnut and Arch street prisons were sold, and the Moyamensing County Prison erected instead.

the yard, and placed beside it a man with a lighted match. It is possible that the evils of promiscuous association as here seen were one of the inciting causes of the advocacy by the Quakers of separate imprisonment.

The idea of strictly cellular isolation by day as well as by night was not original with them; at least it was not new in the world. The *oubliettes* and the dungeons of the Inquisition were made for solitary confinement of prisoners — but with a view to hastening their death. The Church had a motto, *Ecclesia abhorret a sanguine*, which it construed literally, but had ways of putting its victims to death, in some instances, without the shedding of blood; for example, in the horrible dungeons, named *Vade in pace*, which means "Depart in peace." They are said to have been invented by a Prior of Saint Martin-in-the-Fields, named Matthew, and were places where men were allowed to starve to death. But the first mention of solitary incarceration as a means of bringing an offender to repentance (which was the Quaker idea) that I have been able to discover, is in the following extract from the posthumous works of Mabillon, a Benedictine of the Abbey of Saint Germain, in Paris, one of the most learned men of the age of Louis XIV.: —

"Penitents might be secluded in cells like those of the Carthusian monks, and there employed in various sorts of labor. To each cell might be joined a little garden, where, at appointed hours, they might take an airing and cultivate the ground. They might, when assisting in public worship, be placed in separate stalls. Their food should be coarse, and their fasts frequent. No visitors from the outside should be admitted; but the solitude of prisoners' lives should be unbroken, except by the visits of the Superior or some person deputed by him to exhort and console them."

Other references to the separate system as an ideal are scattered along the byways of literature. The Christian Knowledge Society of London, organized in 1699, appointed a committee on prisons, of which Dr. Thomas Bray was the chairman. He made a report in 1700, followed, in 1710, by an "Essay towards the Reformation of Newgate and the Other Prisons in and about London," which is reprinted in Dixon's life of Howard. In these publications he proposed separate confinement for prisoners under sentence of death, but limited it to them. In 1740 or 1750 (different authorities give different dates) Bishop Butler preached a sermon before the Lord Mayor, in which he advocated separate cells for all prisoners: he said that he considered preparation for life even more important than preparation for death. A clergyman named Denne took the same position, in 1772, in a letter to Sir Howard Ladbrooke. Howard himself favored it, but not without reservation. He had seen separation practised in Europe. Of Holland he reports that "in most of the prisons, there are so many rooms, that each prisoner is kept separate: they never go out." In Switzerland, in every canton visited by him, felons each had a room to themselves, "that they might not tutor one another." In his chapter on permanent improvements, he expresses his own opinion: —

"I wish to have so many small rooms or cabins, that each criminal may sleep alone. If it be difficult to prevent their being together in the daytime, they should by all means be separated at night. Solitude and silence are favorable to reflection, and may possibly lead them to repentance."

Elsewhere he has said that he wished "all prisoners

to have separate rooms, for hours of thoughtfulness and reflection are necessary;" and added that he meant by day as well as by night, but yet "not absolute solitude." That he dreaded the effect of too protracted isolation is apparent from the following quotation:—

"It should be considered by those who are ready to commit for a long term petty offenders to absolute solitude, that such a state is more than human nature can bear without the hazard of distraction or despair."

The earliest prisons built upon the separate system in England were built, one of them at least, under Howard's eye, or after consultation with him: the jail at Gloucester, built by Sir G. O. Paul, an eminent magistrate, about 1785, and opened in 1791, under a special Act of Parliament for the regulation of the Gloucestershire prisons. A separate cell for each prisoner was also provided in the jail at Horsham, built in 1779, six years before that of Gloucester, but there is no evidence that the separation of prisoners by night and by day was there enforced.

Solitary imprisonment was prescribed by the revolutionary penal code of France, adopted in 1791, in the following words:—

"Every convict sentenced to *la gêne* shall be incarcerated alone in a light cell, and shall not be put in irons nor be branded; but he shall be interdicted from all communication, during the term of his sentence, with other convicts or with persons from the outside." [1]

[1] This reminds one of the dreadful inscription which the great and humane Edward Livingston proposed, in his "System of Penal Law for the State of Louisiana," to have inscribed on every murderer's cell: "In this cell is confined, to pass his life in solitude and sorrow,

This was almost a literal transcript from the Austrian code published by Joseph II. in 1785; but the Austrian original contained a clause forbidding the giving to any prisoner, at public expense, of any food other than bread and water, which was substantially equivalent to slow starvation. The purpose of the Austrian code was the immemorial wish to suppress crime by severity: but the French modification of it was animated by a half-formed thought of the possibility that the prisoner might be benefited by seclusion.

Notwithstanding these various premonitions of the coming revolution in prison construction and management, the real foundation of the separate system can hardly be said to have been laid until, in April, 1790, the Legislature of Pennsylvania directed the County Commissioners of the county of Philadelphia to erect, in the yard of the Walnut Street Jail, "a suitable number of cells six feet in width, eight feet in length, and nine feet in height," which, "without unnecessary exclusion of air and light, will prevent all external communication, for the purpose of confining there the more hardened and atrocious offenders, who have been sentenced to hard

A. B. convicted of the murder of C. D.; his food is bread of the coarsest kind, his drink is water, mingled with his tears; he is dead to the world; this cell is his grave; his existence is prolonged, that he may remember his crime and repent it, and that the continuance of his punishment may deter others from the indulgence of hatred, avarice, sensuality, and the passions which led to the crime he has committed. When the Almighty, in his due time, shall exercise toward him that dispensation which he himself arrogantly and wickedly usurped towards another, his body is to be dissected, and his soul will abide that judgment which Divine Justice shall decree." There is no doubt that this was meant as an inducement to the Legislature to be content with the abolition of the death penalty, for which it was designed to be a substitute.

labor for a term of years, or who shall be sentenced thereto by virtue of this act."

Unfortunately, no labor was provided for convicts thus separately confined. The old Quakers, sensitive as they were to the infliction of bodily pain, seem to have been unable to form in their minds an image of the fearful mental torture of solitude in idleness, as they did not foresee the inevitable effect upon the prisoner's physical and mental health.

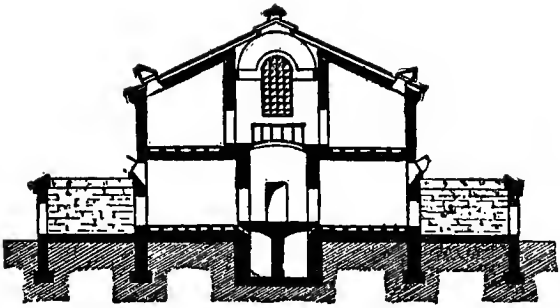
The condition of prisons in America, previous to this beginning of prison reform, and in many places for years afterwards, was about as bad as in England and elsewhere in Europe. In the State of Connecticut, there was at Simsbury,[1] for fifty years or more (1773 to 1827) an underground prison which was merely an abandoned mine, into which prisoners were thrust at night with their feet fast to iron bars and their bodies attached by chains around the neck to a great beam above. It was, notwithstanding this severity, a place where revelry ran riot, and at times pandemonium reigned. The cells in the Maine State Prison certainly as late as 1828 were in the form of pits, entered by a small ladder, through a grated iron door, from the top; for at that time the intention of the authorities was to make enough more

[1] The Simsbury copper mines were worked at intervals for about seventy years prior to the American Revolution, then abandoned and used by the Colony of Connecticut in 1773 as a permanent prison. The first prisoner was committed Dec. 2, 1773. Congress applied in 1781 for the use of these mines as a military prison, but, before the completion of the negotiation, the war closed. For a time mining was followed, but given up on account of the use made of the mining tools by the prisoners in digging out. Afterwards they were employed in making wrought nails. This was the Connecticut State Prison from 1774 to 1827.

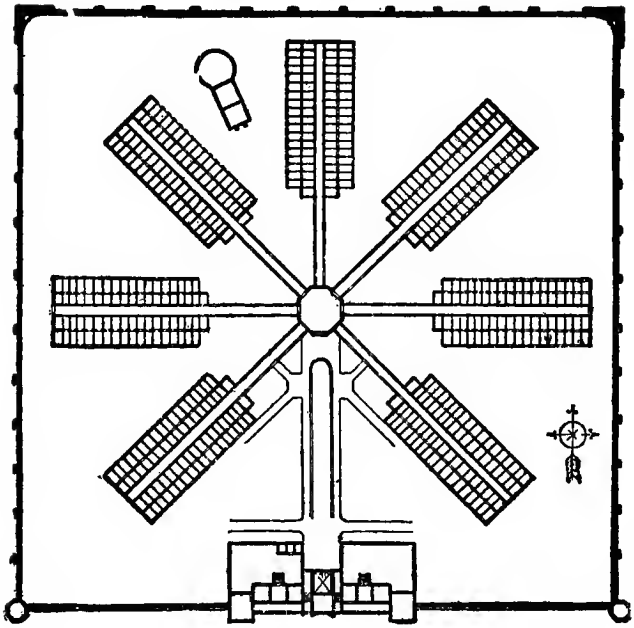
cells just like them to admit of the solitary confinement of every inmate.

In 1817, the Pennsylvania Legislature authorized the construction of two penitentiaries, one in Philadelphia and the other at Pittsburg. Both were planned by an architect to whom the world is under a permanent obligation — Edward Haviland. That at Pittsburg was first built and occupied: the arrangement of the cells in a circle was bad, and has not been imitated. That in Philadelphia has served as a model which has been copied in all parts of the world, with variations, but preserving its main characteristics, the radiating wings, with cells next the outer walls and a corridor in the centre. The drawing on the opposite page shows the original design, which has been departed from and greatly injured by the construction of additional wings, for which there was really no available space; but the more recent cells are an improvement upon those first built.

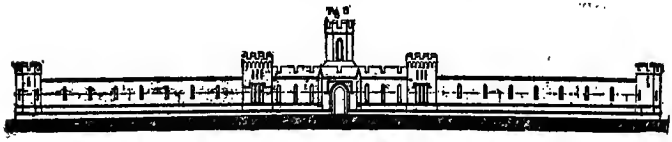
The construction of individual cells was a natural and very praiseworthy reaction against the recognized evils of confinement in association, especially in idleness and without much attempt at discipline. The preamble to the Act of Parliament adopted in 1779, at the persistent instance of Blackstone, Howard and Eden, (afterward Lord Auckland), defined the object of the penitentiary system to be: "to seclude the criminals from their former associates, to separate those for whom hopes might be entertained from those who were desperate, to teach them useful trades, to give them religious instruction, and to provide them with recommendation to the world and the means of obtaining an honest livelihood after



Cross Section of one Wing.



Ground Plan.



Front Elevation, Showing Wall.

the expiration of the terms of their punishment." The questions to be decided were, first, how far the classification of prisoners required to be carried, whether they should be grouped or isolated; and second, whether, if isolation were to be the rule, it should be by night only or both by day and night.

At the same time that the people of Pennsylvania were grappling with these problems, the people of New York were doing the same, but finding a different solution. There new laws and a new system had been approved in 1797; but the Auburn State Prison was not created until 1816. It was designed for separation by night only; the convicts were employed during the day in large workshops, in which, under the superintendency of Elam Lynds, formerly a captain in the army, the rule of absolute silence was enforced with unflinching sternness. Captain Lynds said that he regarded flogging as the most effective, and at the same time the most humane, of all punishments, since it did no injury to the prisoner's health and in no wise impaired his physical strength: he did not believe that a large prison could be governed without it. This belief actuated his conduct. He had little or no faith in the possibility of reformation of convicts; he believed them all to be arrant cowards, and encouraged in the sub-officers the disposition to treat them with contempt. A tale is related of him, that, having heard that the prison barber had threatened to cut his throat, he seated himself in the chair, demanded to be shaved by him, and, at the conclusion of the ceremony, remarked to the abashed and intimidated man, "I am stronger without a weapon than you are when armed." Accordingly, corporal pun-

ishment was frequent at Auburn; it was inflicted upon the spot, the moment that a man was detected in communication with a fellow-prisoner. Captain Lynds proved to be such a successful disciplinarian, that he was selected to build the new State Prison at Sing Sing, created by act of 1825, which he did with convict labor, to the astonishment of mankind, who did not suppose such an achievement within the bounds of possibility. Now that the nature of prisoners is better understood, it is so common as to excite no remark.

Silence was, of course, so far as it could be enforced, in itself a form of separation of prisoners.

In 1819, the New York Legislature authorized and directed the building of a wing at Auburn with cells like those in the Walnut Street Jail at Philadelphia, for trying the effect of cellular isolation upon prisoners. The block, which contained eighty cells, was occupied in 1821; but the results, in the direction of insanity and impaired health, were reported to be such, that the experiment was abandoned in 1823. The men confined to it were given no work: five of them died within a year, and one of them went furiously mad.

In 1827, the Pittsburg prison was ready for the reception of convicts. There was no provision for the employment of convicts committed to it. A committee of the Legislature of Pennsylvania, appointed in December of that year, to report whether solitary confinement should be the rule in the Eastern Penitentiary, advised the introduction into it of the Auburn system; but, under the influence of Roberts Vaux and others, the recommendation of the committee was rejected. It was determined, however, no longer to confine prisoners

in solitary cells in complete idleness; and, in 1829, the legislature prescribed employment for all prisoners.

Between the Pennsylvania and Auburn systems, so-called, a fierce rivalry sprang up. On the one hand, it was insisted that the remedy for the mutual corruption engendered by contact of convicts in association can only be prevented by putting an end to all communication between them. To this it was replied that there can be no such contamination under the rule of silence. The solitary or separate system was admitted to be the more costly. Its opponents declared that it was cruel and dangerous; its friends denied the charge. Lafayette was not favorable to it, because, he said, he remembered that when he was incarcerated in the fortress of Olmutz, he was forever planning new revolutions, from which he inferred that an ordinary criminal would in like manner plan, in the solitude of his cell, fresh depredations upon society; and also because he had seen the wretched inmates of the Bastille released from their dungeons, and he knew that many of them had been reduced to a condition of complete imbecility. Edward Livingston, on the other hand, was its admirer and advocate.

The Boston Prison Society, founded in 1826, and the New York Prison Association, organized in 1845, waged a long and bitter controversy over the question at issue, with the Pennsylvania Society. The necessity for prison reform societies was, in the formative state of the penitentiary system, very great. Our forefathers, who had emigrated to secure for themselves the blessings of civil and religious freedom (to say nothing of making their fortunes in the new world) were capable of as arbitrary

and cruel acts as any of their Old World oppressors, as is witnessed not only by the insane persecution in New England of old women and young girls as witches, but by various other facts less familiar. In New York, for example, negro slaves were sometimes burned alive, and, in order that they might be the longer in burning, green wood was used in making the fire. Worse even than that, they were sometimes hung up in a sort of frame and left to starve to death and their bodies to be eaten by the birds. The state of sentiment in Massachusetts may be inferred from a declaration adopted by the directors of the Massachusetts State Prison in 1815, in which the doctrine was laid down that the discipline should be as severe as the law of humanity will by any means tolerate; that a prisoner's mind requires to be reduced to a state of humiliation; that all intercourse of prisoners with each other, and still more with the outer world, ought to be suppressed; that no newspaper should be allowed inside the walls; that a prison is a world by itself, whose inhabitants are not supposed to know anything of what is passing without its orbit; that the rules should be rigidly enforced, and the smallest deviation from duty severely punished; that the punishment of a convict is incomplete, so long as his mind is not conquered — convicts should be brought to the condition of clay in the hands of the potter, subject to be moulded into any form which the government of the prison might regard as necessary. The guards were exhorted to think of the prison as a volcano filled with burning lava, which, if not restrained, would destroy both friends and foes; therefore they were always to be on their watch against a possible eruption. I

dare say that the fact is almost wholly forgotten that the ancient practice of tattooing Massachusetts prisoners on the arm with the words "Massachusetts State Prison" was not abolished by law until June 12, 1829.

The example set in the Walnut Street Jail was fol lowed here and there, in the United States, for a longer or shorter period, and with some limitations and reservations; but it failed to produce a permanent impression upon the American prison system. Solitary confinement for some proportional part of the term of sentence was authorized in Maryland in 1809, and in New Jersey in 1820. Solitary confinement as a disciplinary punishment in a State prison or penitentiary, with or without prescribed limits, is not uncommon; and the general opinion of American experts in penology is favorable to the complete isolation of prisoners under arrest and awaiting trial. But the only states, I think, which have experimented with it, except Pennsylvania, as the principle of a prison system, are Virginia, where it can hardly be said to have had a fair trial: it was in 1822; the cells were in a basement, never warmed, where the water stood in drops upon the wall: New Jersey, which adopted it in 1833 and abandoned it in 1838: and Rhode Island, which adopted it in 1838 and abandoned it in 1842 or 1843. It was given up in the Western Penitentiary of Pennsylvania in 1869; and the model prison erected on the bank of the Ohio River, at Allegheny, is on the congregate plan.

Even at Philadelphia, the modifications introduced into the system have been great: its harsher features have been gradually eliminated, and the failure of the legislature to provide funds for the proper enlargement

of the establishment has compelled a partial abandonment of the attempt to carry it out in full, according to its original intention. The number of cells is so much less than that of the convicts who occupy them, that "doubling up" was inevitable. In some instances, however, particularly in the female wing, the association of prisoners is allowed, in the cells or at work, from motives of humanity, and it is admitted to be needless and unprofitable to insist upon the absolute isolation of all convicts, of every class.

The conflict between the Pennsylvania and Auburn systems attracted the notice of the civilized world, and various European commissions crossed the Atlantic, to examine and report upon them; of these reports four are conspicuous by their thoroughness. Messrs. Beaumont and De Tocqueville came first, in 1831, at their own expense, but accredited as the representatives of the French government. Sir William Crawford was sent here, the same year, by the English government, which made the liberal allowance of £5,000 for his expenses, which enabled him to provide himself with many illustrative drawings and other valuable material for an elaborate report, which was the basis of the English Act of 1835. He said of the Eastern Penitentiary at Philadelphia, that it was "in fact, with some trifling difference in the arrangements, but a counterpart of the Bridewell at Glasgow,[1] which was in operation five

[1] Mr. J. J. Gurney, who visited the Glasgow Bridewell, Sept. 10, 1818, says of it in his "Notes" that its principle was solitary confinement — one cell for every prisoner, but that Mrs. Fry and he found two persons in every cell. "The prisoners are able to communicate with one another out of their respective cells by day and by night. As their windows look over a small plain on the public road or street,

years before the erection of this prison." In 1835, Dr. Julius was commissioned by the King of Prussia to make a similar investigation and report. At a later date, we were favored with a visit from Messrs. Demetz and Blouet, two other Frenchmen.

From America the controversy passed over into Europe, where it has not yet ceased. The two rival systems are known all over the world as the Pennsylvania and Auburn systems, though the first did not originate in Pennsylvania, nor the second in Auburn, and though neither is now followed, at least in its entirety, as conceived by its originators, either there or here. The general adoption of these distinctive names is nevertheless an admission, honorable to the American nation, that it was on the free soil of the United States, under the influence of democratic ideas, that the penitentiary system received its earliest and best expression, as a humane reaction against former tyranny and oppression in the name of criminal justice. The Pennsylvania system was better thought of abroad than at home. It was adopted in Belgium in 1838: Oscar, of

every little noise and every fresh object on the outside divert their attention from their regular duties. As we approached the prison, we observed a great majority of these windows crowded with spectators." At Aberdeen, where there was also a Bridewell, which was inspected by them, Aug. 29, 1818, the separate system appears to have been better enforced, for Mr. Gurney says: "The several stories of this building consist respectively of a long gallery, with small but commodious and airy cells on each side. Every gallery is divided in the middle by the central stone staircase, the men prisoners being confined on one side [at one end?] of the house, the women on the other. The cells on one side of the galleries are for sleeping, those on the other for working. Every prisoner occupies a sleeping and a working cell, the Bridewell being intended only for solitary confinement."

Sweden, authorized its introduction into Sweden in 1840; it found its way into Denmark in 1846, and into Norway and Holland in 1851; the French Republic, in 1875, approved it for the Departmental Prisons, but the cost of the change has prevented it being fully effected. Many of the very best prisons of Europe, in these and other countries, are constructed, organized and managed on the separate system.

That it has great merits is indisputable. One of them is the ease with which a prison can be governed, when the whole force of the administration, augmented by the architectural resources of the prison, can be opposed to the will of each individual undergoing sentence. Another is the opportunity which it offers for individual discrimination between prisoners in their treatment, according to their personal needs. The absence of almost all occasion for disciplinary punishments is another · the prisoner is certain to demand work; and there is little in the way of disorder or insubordination which he can do by himself. Then, such reformatory influence as may be brought to bear upon him by the prison officers or by the authorized prison visitors is not liable to be counteracted by the public sentiment of evil associates operating in the direction of combined resistance to admonition and counsel. On his discharge, moreover, he is free from the peril of being recognized by some companion in punishment and seduced or blackmailed by him. The motive which prompted it and which sustains it is the belief that solitary reflection has a tendency to bring evil-doers to repentance for their misdeeds; that seclusion protects them from the deterioration of character resulting from evil communications

in prison; and that the reformatory agencies employed for their amendment will have freer scope and a more certainly favorable issue, if resistance to such agencies is not countenanced by the precept and example of the incorrigible. These principles seem, to the advocates of the system, so self-evident, that they are dogmatically sure that nothing half so pertinent and weighty can be said on the other side.

There is, however, the objection that the prisoner, though relieved from the presence of evil companions, is not and can not be delivered from the company of his own thoughts; that he is still free to indulge in solitary vice; that the natural effect of solitude is to enfeeble both body and mind; and that habits contracted during a long term of confinement unfit their subject for the return to the temptations of ordinary life. It is said that the solitude is not complete; that the prisoner is visited by officials of various grades. True: but if any one will take the trouble to divide the number of prisoners by the number of officers and employees who do in fact visit convicts in their cells, he will easily satisfy himself that the number of minutes, on the average, during which the prisoner is not alone, can be but small.[1] Of course, his education in the ele-

[1] The physician of the Eastern Penitentiary of Pennsylvania, in his report for 1850, observed: "I have heard various estimates of the amount of intercourse afforded to our prisoners, but they were all very much exaggerated. My own observation and the opinion of our most intelligent officers satisfy me that the average daily conversation of each prisoner does not exceed, if indeed it equals, ten minutes." If this was the average, how much intercourse with their fellow-men did those have, who enjoyed less than the average? They probably constituted the majority. Remember, too, that this average was administered not all at one time, but in broken doses.

ments of knowledge is hindered by the want of class instruction. The difficulty of imparting religious instruction, and of overseeing the work of prisoners, and of giving them needed physical exercise, is enhanced. Finally, the claim that communication between prisoners is suppressed cannot be conceded. Vibrations in a solid wall separating adjoining cells are easily produced by tapping, and the signals so conveyed are readily understood and answered. It is a proverb that sound will travel wherever air can go: the pipes in every prison upon the separate plan serve, if the prisoner knows how to make use of them, as speaking tubes. All devices invented to prevent communication in one or the other of these two ways are ineffectual or too costly for adoption.[1] Prisoners seem to have ways of passing word from one to another which are too subtle for detection: they know as if by instinct what the authorities in charge fancied to be an impenetrable secret. Mr. George Kennan has given an interesting account of the manner in which the Russian prisoners have developed out of the "knock" alphabet a highly ingenious cipher, the use of which even in communicating by taps upon the wall diminishes the number of taps which are necessary.[2]

[1] In the solitary cells of the Russian fortress of Saint Peter and Saint Paul, the floors are covered with painted felt. The walls are also covered with felt, and at a distance of five inches from the wall is a wire netting covered with linen and with yellow paper. The object of this contrivance is to prevent communication between prisoners by knocking on the wall.

[2] This is accomplished by a highly ingenious arrangement of the alphabet in five vertical columns, as shown on the following page.

Instead of counting the number of each letter from the beginning of the alphabet (which would require, for the letter T, twenty knocks),

	1	2	3	4	5
1	A	B	C	D	E
2	F	G	H	I	J
3	K	L	M	N	O
4	P	Q	R	S	T
5	U	V	W	X	Y
6	Z				

the number of the line is to be given in which the letter is found, followed by that of the column, so that, for T, four raps are followed almost immediately by five more, making nine in all — a saving of eleven, or more than half. The saving on each letter in the second line is three raps, seven for each letter in the fifth line, eleven in the fourth, fifteen in the fifth, and in the last nineteen; against which there is a loss, on each letter in the first line, of one. The total saving, therefore, is 194 out of 351 raps, which would otherwise be required in repeating the whole alphabet, or an average of 55 per cent. If the square had no other value, this would be enough to recommend it. But Mr. Kennan shows how it can be converted into a cipher almost or quite inscrutable, by using a key word, and adding its value to that of the other words in a sentence. The example which he gives is as follows, in which the key word is "prison": —

N	i	c	h	o	l	a	s	a	r	r	e	s	t	e	d
P	r	i	s	o	n	p	r	i	s	o	n	p	r	i	s
34	24	13	23	35	32	11	44	11	43	43	15	44	45	15	14
41	43	24	44	35	34	41	43	24	44	35	34	41	43	24	44
75	67	37	67	70	66	52	87	35	87	78	49	85	88	39	58

The peculiar merit which he sees in this cipher is that the same letter may at one time be represented by one number and at another by another, while the same number may at different times represent different letters. A cryptograph of this kind cannot be deciphered by any of the ordinary methods. In deciphering a communication thus disguised, the numerical equivalents of the key word are, of course, to be subtracted from the cipher numbers, and then the letters which correspond with the figures in the remainder, are to be sought in the alphabetical square.

The cipher numbers are sometimes written, sometimes called aloud, sometimes communicated by waving the hand or alternately showing and concealing a light. If a prisoner has access to a window, communications can thus be carried on with persons at a distance — with friends outside, or with other prisoners.

All of which suggests the question, does isolation isolate?

If the separate system has not proved as successful as was hoped, the same may be said of the Auburn system also. In most American prisons the rule of strict silence is not only not enforced, but no attempt is made to enforce it. Congregate prisons are, nevertheless, popular, largely because the employment of prisoners in shops, in connection with machinery operated by steam, renders their labor more profitable, whether they are at work upon contract or on public account. The reformatory influence of labor is perhaps less, where its primary purpose is the profit to be derived from it; and the presence of a prison contractor, while it relieves the warden of a responsibility always burdensome, to which he may moreover, be unequal, and while it is recommended by its greater certainty to save to the State a part, if not the whole, of the cost of maintenance of the prison, is yet an obstacle in many ways to the establishment of a reformatory discipline. The reformatory end in view in the creation of the penitentiary system, has, through the growth of a disposition to connect our prisons with the political machinery of elections, been measurably lost sight of; though it has been made more prominent, since the organization of the National Prison Association and the holding of annual Prison Congresses.

The real test of the excellence of a prison system is its adaptation to develop in its subjects the power of self-control. Like the lunatic and the idiot, the criminal, if he ever had normal power of self-control, has lost it by disease or disuse. It is therefore not only necessary to restore or to create it, but to demonstrate the precise degree to which it has been developed. This

the Pennsylvania system does not do, since it sedulously guards its subject from external temptation. Neither does the Auburn system accomplish this end; for it is not enough to know by observation how a man will act in prison under guidance and restraint, but we need also, before releasing the grasp of the law upon him, to know how he will act when the restraints of prison life are removed. A new system has therefore been evolved out of the failure of these two, as they were evolved out of the failures which preceded them.

The general influence which gave rise to the new or graded system may be traced to Australia, as will be shown in the next chapter.

CHAPTER IX.

TRANSPORTATION AND THE PENITENTIARY SYSTEM.

The provision of Magna Charta which protects Englishmen from compulsory exile was evaded, before the abolition of the right of sanctuary, by the offer, in certain cases, of a free pardon to criminals, on condition of their abjuring the realm, and by threatening them with hanging, should they ever return. A statute passed in the thirty-fifth year of Elizabeth authorized the administration of the oath of abjuration to Roman Catholics and to Protestant dissenters; in 1596, by a similar act, rogues and vagabonds were given the same privilege of voluntarily leaving the country for their country's good. Abjuration and the right of sanctuary were abolished under James I. The Act 18, Charles II., c. 3, authorized the transportation "to any of his Majesty's dominions in North America" of felons under sentence of death: they were given their choice between hanging and transportation, so that the latter was in effect a conditional pardon. In 1718, by Act 4, George I., c. 2, the penalty (or privilege) of transportation was extended to all felons sentenced to a term of imprisonment not less than three years; to return prior to the expiration of sentence was an offence punishable by death. Contracts were made with private persons to convey the transported across the sea; the contractors and their assigns were given the right to their labor

during the term of sentence, which they sold to the criminal himself or to his colonial purchaser. Sometimes he was released before he passed the mouth of the river Thames; oftener, on his arrival in Jamaica, Barbadoes, Maryland, or elsewhere on the American coast. For a time, four or five hundred were shipped to Maryland annually; others were sent to Virginia. The planters bought them. In effect, they were slaves, for a term of years; and the traffic in convicts was a form of competition with the African slave-trade. Reputable American colonists freely expressed their disgust with the system, but it suited the Mother Country, and the practice only ceased with the War of the American Revolution. When this outlet for English rogues was forcibly stopped, the number of convicts in England increased so rapidly as to constitute for twelve years a serious embarrassment to the Government, which had not prisons enough to hold them. The surplus convict population was therefore confined in hulks, of which more will be said by and by. Not knowing what to do, the Government made an effort to establish a penal colony at Sierra Leone. In consequence of the mortality resulting from the intense heat, this experiment proved a failure and had to be abandoned. Thus the American War was the unexpected occasion of the birth of the penitentiary system, and of modern prison reform, as the sequence of the discussion in England to which the embarrassments growing out of that war gave rise.

The voyages of Captain Cook, in 1770, 1773 and 1777 (in all of which he visited Australia, formerly called New Holland), attracted the attention of the Eng-

lish Government to that quarter of the globe. Europe was distracted by the events which preceded the French Revolution, and had its eyes turned elsewhere. England profited by this circumstance, and took possession of a new world.

By an order in council, dated Dec. 6, 1786, Commodore Alfred Phillip was appointed Governor of New South Wales. Eleven vessels, two of them ships of war, were loaded with seven hundred and fifty-seven convicts (part of whom were women), a limited number of troops, provisions and other necessaries, and finally set sail from Spithead for Australia, May 13, 1787.

The voyage lasted eight long months; the emigrants disembarked January 18, 1788, at Botany Bay — a ridiculous misnomer, since the place proved to be a desert. Leaving there a few of the sick, Commodore Phillip pushed toward the north and landed, a week later, at Port Jackson, where the foundations were laid of the now flourishing city of Sydney. Eleven of the colonists, with their wives, under the guard of two soldiers, settled on Norfolk Island, a veritable Eden, afterward famous as a hell on earth.

By the close of the year, the provisions on hand began to fail; no fresh supplies were received from the Mother Country; scurvy broke out; and the settlers suffered both from famine and pestilence. Even the natives were afflicted with small-pox, a disease of which they had previously no knowledge, but which the English attributed to contagion from a French sailor. To the other troubles of the colonists were added hostilities on the part of the aborigines. Within twenty months

of the first landing, out of eight or nine hundred souls, one hundred and fifteen were already dead. No relief came until the third of June, 1790, when a vessel arrived, with some provisions and a cargo of women, which was soon followed by two more; but several vessels with supplies were lost at sea.

The task assigned to Commodore Phillip was no easy one. He set himself with all his might to organize an element of honesty in the midst of abounding rascality and profligacy, and to teach his men to become self-supporting, as well as in a degree self-governing. His authority was greatly augmented by the bestowal upon him by the Crown of the right of conditional pardon. But the moment arrived, when the terms of sentence of the transported convicts began to expire; a terrible moment for him and for the colony. There was nothing for them to do, and no place to which they could go. He offered them concessions of land, employment, government aid, and warned them that the alternative would be a return to England at their own cost. The majority spurned his offers. He could neither imprison them, nor attach them to the soil as free men. They returned home as best they could, as seamen before the mast or as stowaways; any way to get back to their former haunts, and there resume a life of crime. To add to his perplexities, many unconvicted emigrants (chiefly Irish) arrived in search of an easy fortune in the new Eldorado, as they supposed it to be, most of whom landed in a state of destitution. A glamour of romance surrounded new countries, a century ago, which was enhanced by such books as Paul and Virginia, that idyl of love and innocence in the tropics. Then

he had tremendous difficulties to encounter, in consequence of the overwhelming preponderance of the male sex. With the dawn of commerce, ardent spirits were smuggled into the settlement; enforced abstinence had aggravated the appetite for drink; what could one expect? In short, by the end of 1792, Commodore Phillip was exhausted, and he applied to be relieved of a responsibility which was beyond the powers of any living man.

He was succeeded, provisionally, for a year and a half, by Major Grose, the Lieutenant Governor, under whom originated the system of hiring convicts to free colonists, also the breeding of live stock; the latter was largely due to the exertions of an officer named McArthur.

The Government then sent out Captain Hunter. When he arrived, the most flourishing business in the colony was the distillation and sale of liquor, which could not be supressed; it was therefore authorized and the privilege conferred upon favored individuals. The convicts had, too, in some unknown way, managed to arm themselves, but were held in check by an armed police composed of convicts who were well disposed. A census, taken September 1, 1796, showed that there were then 361 self-supporting convicts, 3,638 who were not self-sustaining, and that nearly a thousand of the more turbulent and dangerous were on Norfolk Island. The fact that convicts will not become colonists, until all hope of a return to the land from which they came is extinguished within them, became more and more evident; and the presence of those whose terms of sentence had expired, besides being a pecuniary burden, was a constant menace to social order and security. By the year 1800, the necessity for a prison was so urgent, that

private and voluntary subscriptions of money were freely made, to defray the cost of its construction.

Captain King, the Commandant of Norfolk Island, followed Captain Hunter. One of his first acts was to found an orphan asylum for girls, eighteen miles from Sydney, who were there to be trained for wives, married off, and provided with homesteads at the public expense. In 1804, he started a settlement, under Colonel Collins (in Van Diemen's Land, now Tasmania, then recently discovered), and founded Hobart Town. Norfolk Island had become such a nest of brigands, that an attempt was made to break it up, by the offer of free transportation to the new penal colony, and a double concession of land; but the majority preferred to remain where they were.

Captain Bligh, who succeeded King in 1806, was a tyrant; the colony rose against him and held him a prisoner in his own house, until he could be sent to England.

Colonel Macquarie, the next Governor, was an able and popular ruler, who began his administration by appointing an ex-convict to a seat upon the bench. The number of convicts who had then been transported to Australia, during the twenty years which had elapsed since the landing of Commodore Phillip, was 13,000 men and 3,265 women, of whom about 5,500 had died, leaving a population of 10,000 or more. The number of children born to them was about 9,000. Macquarie founded a bank. He secured gratuitous passage from England of the families of convicts, and the sending of young girls who professed penitence from female reformatories at home to be married in Australia. His

reign lasted for twelve years, but it was embittered by attacks made upon him in Parliament, which led to an investigation, resulting in nothing except the division of Australian society into two hostile factions, the "emancipists" and the "exclusionists": the former wished to give the convicts a voice in the Government, but the latter were radically opposed to convict colonies.

This division of feeling, which was very marked under General Brisbane, was the first symptom of the ultimate failure of the entire system. The adaptation of Australia to sheep husbandry and the growing of wool attracted English free settlers. Brisbane, by concessions in land, induced them to assume the charge and maintenance of convicts, and this gave rise to the troublesome and dangerous system of assignments, which closely resembled the lessee system now in vogue in some of the Southern states of the American Union. It was the cause of immense irritation in the colonies. The parties assigned to a planter were known as a "clearing gang." The money paid for their labor was paid to the Government. Since a higher price could be obtained for the better class of convicts as mechanics, only the worst of them went to the clearings and the sheep farms. Without following the history of the successive colonial administrations in detail, it is enough to say that in 1837, at a time when the English Government was in love with a novelty recently imported from America — the cellular or separate system of imprisonment, a select Parliamentary Committee, which included Lord John Russell and Sir Robert Peel, was appointed to inquire into the justice of the complaints made by

the colonists. The upshot of this investigation was the adoption of a new system, that of probation.

At first, the period of probation was served in Australia. The convict, on his arrival, was placed in a probation gang, and employed in felling timber or in other public work. These gangs worked in chains, lived in barracks, and moved about from place to place. From the probation gang the prisoner rose by good conduct to a state of comparative freedom, in which he worked for private individuals, but the Government appropriated the money paid for his services. In Van Diemen's Land, there were three grades or classes of convicts, between the probation gang and conditional liberation on ticket-of-leave; and each prisoner passed through all of them in succession. The ticket-of-leave was followed by a complete pardon, but, by the Act of 1847, the term of probation was ordered to be served in England; at its expiration, the criminal was transported; on his arrival in Australia, he was given a ticket-of-leave and was at liberty to hire himself to a free settler. Thus for assignment was substituted freedom of contract.

It would be foreign to our immediate purpose, to trace the history of Australian transportation farther than is necessary to show its connection with the development of the prison system, first in England, then in Ireland, and at last in the United States. The experiment finally broke down, as it was inevitable from the beginning that it would. The difficulties in the way of success were chiefly three: (1) the inequality of the sexes; (2) the want of work for discharged prisoners in an unsettled country, where there are no employers; and (3) the dissensions which arose, after the advent of

innocent settlers in numbers sufficient to enable them to demand that no more convicts be sent into the country. Besides, the accompaniments of this form of punishment were truly horrible. On the convict ships, the discipline was much the same as upon a slaver; men and women, separately chained in pairs, were imprisoned in the hold, where blasphemy and obscenity reigned, with little or no effort to put a stop to them. Ship-fever was common and fatal; in a ship which sailed in 1799, with three hundred convicts, one hundred and one died on the voyage. On land, the difficulty of enforcing discipline was the occasion of great brutality; the main reliance for order was the lash, and in 1838, with 16,000 convicts, the number of floggings administered was 160,000, or an average of ten to each man. From 1793 to 1836, the death-rate among the transported was forty per cent, but among the free colonists only five per cent.[1]

Transportation to New South Wales was suspended in 1840. Mr. Gladstone suspended all transportation, during 1847 and part of 1848. Just at this crisis, gold was discovered, in 1850, in New South Wales and Victoria. The Government had agreed to send out as many free colonists as convicts. Western Australia had been

[1] "Sir William Molesworth's committee of 1837–8, after a laborious investigation, concluded their report by condemning the punishment of transportation, as being unequal, without terror to the criminal class, corrupting to both convicts and colonists, and extravagant in point of expense. This committee recommended the institution of penitentiaries, at home and abroad, in place of it. These resolutions, together with the report of the Duke of Richmond's committee in the preceding year, produced a great effect upon public opinion, and the whole subject came seriously under the consideration of the Government." — SIR JOSHUA JEBB, at the Social Science Congress, London, 1862.

erected into a new penal colony; but the free colonists were flocking to the gold fields. With the passage of the Act of 1857, the word transportation disappeared from the statutes. The thing itself lasted, under the name of probation, until 1867, when the last shipload of convicts sailed for the antipodes, thus bringing to an end an experiment which lasted for precisely eighty years, and had at last to be abandoned.[1]

A word in passing as to French and Russian transportation will divert us but a moment from the course of the argument.

France made an unsuccessful attempt to establish transportation, about a hundred years ago. By a provision of the penal code of 1791, criminals convicted a second time were ordered to be transported for life. By an act of the 24th Vendémiaire, in the year II., the Convention extended this order to include vagrants; and by the law of the 11th Brumaire, in the same year, the island of Madagascar was designated as the site of the proposed penal colony. The naval war between France and England prevented the execution of this design. In 1810, the project having remained in abeyance, the Code

[1] The convict life of Australia and the effect of the brutalities practised by some of those to whom the administration of the transportation system was there confided are well described in a work of fiction, "For the Term of his Natural Life," by Marcus Clarke, which occupies in Australian literature a place somewhat analogous to that of "Uncle Tom's Cabin" in our own. It has been dramatized, and the play founded upon it is a stock piece, which can be put upon the boards at Sydney in any dull theatrical season. The warden of an American penitentiary, after reading this novel, purchased a number of copies for the prison library, with the double motive, as may be supposed, of contrasting his own mild but firm discipline with a harsher system, and of explaining his motive in adopting it, which was not moral weakness but the reverse.

Napoléon abrogated the former code and so put an end to the project. In 1851, it was revived, during the reign of terror that succeeded the *coup d'état* of December 2, and by an unconstitutional ministerial decree, transportation was established. The decree named Guiana and Algiers as colonies to which prisoners might be sent; but it was modified, the year following, so as to apply only to Guiana. In May, 1854, an act legalizing transportation was passed, and this penalty was substituted for hard labor in the *bagnes*, which were suppressed, though that at Toulon continued to exist, until nearly twenty years later, as a depot for convicts awaiting passage across the sea. New Caledonia, an island in the South Pacific Ocean, about seven hundred miles east of Australia, was made a penal colony in 1863, at first merely as an experiment. Guiana and New Caledonia are now the only French penal settlements, though some military prisoners are still sent to Algiers.

The history of the attempt to colonize Guiana is inexpressibly sad. The country lies too near the equator, to be inhabited by Europeans; the coast is marshy, the temperature always high, and rain falls one hundred and eighty days in the year. It is devastated by yellow fever (which is said, however, not to be epidemic), by marsh fevers, by dysentery, and by a fatal anæmia. In face of the depressing climate, marriages tend to become sterile. Count d'Haussonville has reported that, during the first period in the history of this colony, the average mortality was twenty-five per cent, and at some places it reached thirty-two per cent. In consequence of the terrible mortality, the Government, in 1867, relinquished the purpose to send European convicts thither, and

Guiana is now reserved for negro convicts sentenced by the courts of Guiana, Martinique and Guadeloupe, and for Arabs shipped from Algiers.

The first shipload of two hundred and fifty convicts sailed from Toulon for New Caledonia, Jan. 2, 1864, and arrived in the roadstead of Nouméa on the 9th of May, after a voyage lasting a little more than three months. Nouméa is the seat of government. The prisoners are divided into four grades. They disembark on the island of Nou, which presents from the water the appearance of a great manufacturing establishment, with its workshops, its tall chimney, and its prison barracks, built of stone, in which the men sleep, in groups of fifty to each barrack. The most incorrigible are here. The moral atmosphere of this island is identical with that of the old *bagne* at Toulon, of unsavory memory, which has in effect been removed bodily to Oceanica. From Nou they are conveyed by the "penitentiary flotilla," — a tow of barges drawn by a wheezy steam-launch, — to Nouméa, which is a beautiful port, but destitute of easy means of entry, without wharves or lighthouses, much less fortifications, the streets of which are said to be open ditches. From Nouméa they are sent to the camp of Montravel, and given a ten days' rest from the fatigue of the voyage. Thence they are distributed to various points to work; only, as M. Denis, formerly assistant director of the colony, dryly remarks, they need not work unless they choose, for they cannot be punished for not working. The lighter punishments they do not fear; and although the law authorizes their confinement in a dungeon, the architect of the prison quarters on the island

of Nou kindly omitted to provide any dungeon. New Caledonia consists of a wooded mountain range, of volcanic origin, pushing its head above the level of the sea to a height, in some places, of eight thousand feet. The greater part of the surface is rocky; here and there are plateaus of rock covered with a few inches of soil. The celebrated farm of Bourail, the pride of the colony, produced, in 1880, with three hundred farm hands and one hundred factory hands three and a half tons of sugar, while the annual product of the farm of Koe brings forty thousand dollars less than its cost.

French transportation is sustained by two powerful motives, the desire to be rid of dangerous criminals, and the wish to found colonies. But the difficulties encountered have proved to be the same as in Australia, with some others superadded. There is the initial difficulty of determining what class of criminals shall be transported, and at what stage of their punishment and for how long a period. Then arise legal questions as to the character of this penalty. What is it? an original sentence, a supplemental sentence, or a commutation sentence? If transportation is to follow imprisonment, where shall the preliminary term of incarceration be served? In the colony or in the Mother Country? Another vexed question. There is also the difficulty of supervision of criminals at so great a distance from the home office, to say nothing of the increased expense of maintaining and guarding them. How are they to be prevented from escaping and returning home, or from leading the life of outlaws in the uninhabited portions of the colony? Either the convicts must be surrounded

by free population made up of honest emigrants, which will in time absorb them, and these honest citizens rebel against the practice of thrusting upon them convicts as associates; or, if not so surrounded, the convict population preys upon itself and becomes a moral cesspool. In the absence of free settlers, the Government is put to great expense for the repression of crime and the relief of destitution among the transports whose term of service has expired.

The earliest mention of transportation in the penal laws of Russia was in 1648, when it was regarded less as a punishment than as a means of getting rid of crippled and mutilated criminals. Mr. George Kennan says: —

"The amelioration, however, of the Russian criminal code, which began in the latter part of the seventeenth century, and the progressive development of Siberia itself gradually brought about a change in the view taken of Siberian exile. Instead of regarding it, as before, as a means of getting rid of disabled criminals, the Government began to look upon it as a means of populating and developing a new and promising part of its Asiatic territory."

And again: —

"In the eighteenth century, the great mineral and agricultural resources of Siberia began to attract to it the serious and earnest attention of the Russian Government. The discovery of the Daurski silver mines, and the rich mines of Nertchinsk in the territory of the Trans-Baikal, created a sudden demand for labor, which led the Government to promulgate a new series of *ukazes* providing for the transportation thither of convicts from the Russian prisons. In 1762, permission was given to all individuals and corporations owning serfs, to hand the latter over to the local authorities for banishment to Siberia, whenever they thought they had good reason for so doing. With the abolition of capital pun-

ishment in 1753, all criminals that, under the old law, would have been put to death, were condemned to perpetual exile in Siberia, with hard labor."

The exiles may be divided into three groups: (1) those sentenced by a court, of whom nearly all are criminals, who must remain in Siberia for life; (2) those banished by administrative process, without trial; (3) voluntary exiles, comprising members of the families of the banished. Of those banished by order of the Minister of the Interior, two-thirds are sent away at the request of the *mir* or village community to which they belong, and are simply vagabonds or discharged misdemeanants. The political prisoners, of whom the number exiled annually is almost insignificant, are not separated from the rest, in the above classification.

Mr. De Windt says: —

"There are two kinds of criminal prisoners in Siberia, namely, those who have forfeited all civil rights, and those who, though undergoing long terms of penal servitude, have retained them. An exile of the first category is, from the date of his sentence, practically dead to the world. He can never hope to return to Europe, his property goes to his heirs, he loses everything he has, even to his wife and name; for the former is at liberty to remarry, while the latter, as a legal signature, is worthless. This class is distinguished by the head being half-shaven. The second-grade convicts lose no family or property rights, but are destined, their imprisonment over, for colonization. Of this class, many find their way back to European Russia, and the majority serve but a short term of penal servitude, though their sentence be a severe one. If well conducted, they are generally permitted to live outside the prison with their families, earning their own livelihood, but devoting a portion of their time to Government work. Many of the women become domestic servants."

The number banished each year, which used to aver-

age about eighteen thousand, has declined of late, and is now less than fifteen thousand. Many ameliorations in the lot of the exiles have also been brought about. The following account of the route by which they arrive at their destination is taken from De Windt:—

"The Great Forwarding Prison of Moscow forms the rendezvous whence, in summer, gangs of about seven hundred exiles each are despatched two or three times a week by rail to Nijni-Nóvgorod. Here they are embarked upon prison barges and towed by steamer to Perm. From Perm well-appointed and specially built railway cars convey them across the Ourals (mountains only in name) to Tiumén, and from Tiumén a river journey of about nine days (upon similar barges to those aforementioned) lands them at Tomsk. At Tomsk the march (for those sentenced to remote districts) commences. Many, however, convicted of minor offences, are landed at Tobolsk, Sourgout, or other settlements far nearer Europe. From Tomsk the great post road (the only one) leads to Irkútsk. Two days beyond the latter city lies Lake Baikál, across which prisoners are conveyed in large wooden hulks, towed, as on the Obi, by cargo steamers. The post road is then taken once more, and three or four weeks later, according to circumstances, the mines of Siberia (Karà and Nertchinsk) are reached. The voyage from Moscow to the latter is usually made by ordinary travellers in a little under three months; but the time varies considerably with prison convoys, who may be detained by sickness, floods, impassable rivers, etc. No travelling is done in winter."

The road is lined with stations called *étapes*, built of logs or of plank, for the accommodation of prisoners *en route*. They have large chambers with double rows of sleeping platforms through the centre of each, and closely resemble the barracks[1] in which leased pris-

[1] "In Mr. George Kennan's celebrated papers upon the Russian exile system, he fully describes the '*kameras*' or cell-houses in use in Siberia, and his articles are accompanied by numerous illustrations.

oners are so often housed in the Southern States of the American Union. They are not large enough to furnish proper care of so many convicts as frequently occupy them for the night, and are at times badly overcrowded. It is easy to believe that their sanitary condition is not always satisfactory.

The evils of the exile system are well known to the Russian officials and have been freely commented upon by them. Count Sollohub declared himself "an implacable enemy of transportation," and said that in Siberia "recidivism exists perpetually, on a colossal scale;" it was his intention to have given to the public the official information in his possession upon this subject; but the time never came, when he thought it expedient to carry out this purpose. The report of Governor-General Anúchin to the Emperor, in 1880, on the state of affairs in Eastern Siberia, as quoted by Mr. Kennan, proves that the Australian experience has been partially duplicated there. Russian convicts are sentenced to imprisonment with hard labor, or to forced colonization without labor. The latter are, upon their arrival at the place of their enrolment, given their entire freedom and expected to maintain themselves.

I will venture the assertion that, if any Floridian convict was shown these pictures without the accompanying text, he would be prepared to swear that they were ruins of the camp in this State. It is not merely a slight resemblance, nor even a marked resemblance, but the two are absolutely identical in every essential detail. The main difference is that there is no building-chain used in the Siberian cell-houses, the prisoners being given the liberty of the room, after they are locked in. The sleeping platforms, called '*nares*' in Russia, and those in use here are exactly alike; such scanty arrangements as exist for personal cleanliness are similar, and the general arrangement and construction of the building and the stockade are the same.

"Only the least spoiled part of them, and those accustomed to work, establish themselves in the places to which they are assigned, or seek employment in the gold placers. The rest abandon their places of enrolment and wander about the country, giving themselves up to laziness, and imposing themselves as a heavy burden upon the local population, at whose expense they are fed. The influence of these exiles upon the people of the country is very pernicious, since they carry into the villages and towns the seeds of depravity. As the Siberian population grows more and more prosperous, it manifestly feels more and more the heavy burden of these criminal colonists, and submits to their presence only as to an evil that is inevitable, protesting loudly, however, in the meantime, against such an order of things."

Two of the greatest difficulties experienced by the Government are the impossibility of adequate supervision, so that at Karâ very nearly ten per cent of the prisoners at work in the mines escaped in one year, and the lack of sufficient facilities for the industrial employment of convicts, so that more than half of them are idle.

Since 1869, the island of Sâghalin, in the gulf of Tartary, has been used as a penal colony. Prince Krapotkine describes it as a spot unsurpassed in desolation except by Nova Zembla and New Siberia. This island

The lowest order of Russian prisoners are fastened with stride and waist chains exactly like those used in Florida, and there is a coincidence of little details that is perfectly amazing to one familiar with both systems. Mr. Kennan states that, when he visited one of the *kameras*, he was horrified to observe that the whitewashed walls were stained a dusky red for some distance above the sleeping platforms, and was told that the stain was made by the prisoners, who crushed there the innumerable vermin that infested their beds. Mr. Kennan need not have gone so far away from home. In summer time these insect pests are almost impossible to exterminate, and it takes only a few weeks for the convicts at the camps to paint a dado on the walls exactly similar to that which Mr. Kennan observed." — "The American Siberia," by J. C. Powell, Captain of the Florida Convict Camp.

is something less than seven hundred miles in length, and one hundred and fifty miles in extreme width, with coal mines and some arable land of poor quality. The aboriginal population, a tribe of savage hunters and fishermen, numbers five thousand. The country is "shrouded, summer and winter, by dense fogs, the sun is seldom seen, and even in the month of June snow lies upon the hills, and the ground is frozen two feet deep." To the extent that this barren region is made a seat of penal servitude, Siberia will be freed from the presence of the undesirable class of colonists, but at what a cost to the victims of the hateful system!

Alaska has sometimes been talked about as a desirable penal colony for the United States. But, apart from the warning contained in the experience of other nations, there are reasons founded in our political system why the establishment of such a colony would be impossible. In America crime is a local affair, since every State has its own code; the only federal offences are offences against the Federal Government, or offences committed upon federal territory. The Federal Government would not have enough prisoners of its own to render it worth while to transport them, while the States have no jurisdiction over Alaska, and could not send their prisoners there, even if they wished.

After this digression, we return to the question of the influence of Australian experience upon the course of prison evolution in England.

When the American War of Independence closed the colonial outlet for felons (of whom Mr. Eden estimated that England sent abroad one thousand a year), Parlia-

ment, in 1779, directed that the county Bridewells should be enlarged, which, however, the local justices neglected to do, and proposed the erection of penitentiaries on the separate system, but with labor. As a measure of purely temporary relief, two old hulks at Woolwich were converted into prisons, though they were never so called, or treated as such in any statute; other hulks were afterwards provided, at other royal dockyards. These hulks were not adapted to occupation by convicts, and they became not only death-traps, by reason of their unsanitary condition and the prevalence in them of typhus fever, but cesspools of moral contagion. They were leased out to a contractor, at a fixed price per head for prisoners committed to them, and the contractor was made overseer, so that his accountability must have been very slight, and the opportunity for abuses to grow up was proportionally great. The hulks were in use in England until 1857, and at Gibraltar until 1875.

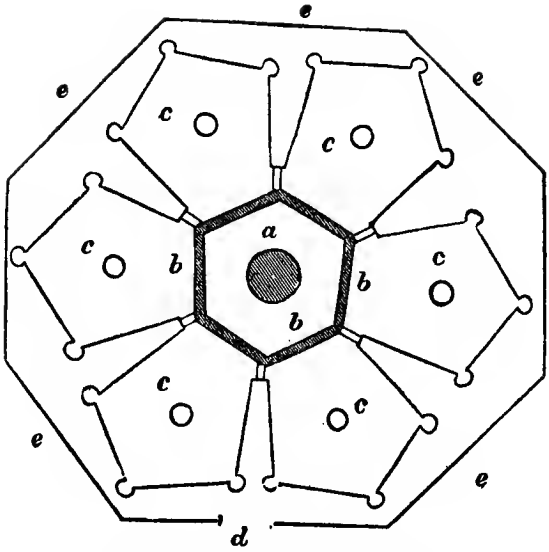
In consequence of the inadequate accommodation which they supplied, the erection of Millbank prison, for twelve hundred prisoners, was determined upon in 1812.[1]

[1] An Act authorizing the construction of a Penitentiary had been agreed to in 1779 (19 George III., c. 74); a site was purchased in September, 1782; but the intention of the Government to found a colony at Botany Bay led to the suspension of the project, until Mr. Bentham came forward with his scheme for a Panopticon, which was informally approved and an Act passed in 1794 (34 George III., c. 84), under which fifty-three acres in Tothill Fields were conveyed in 1799 to Mr. Bentham, and a contract with him drafted, which was fortunately never signed. In 1810 Sir Samuel Romilly called the attention of the House to the inaction of the Government. Two more years elapsed before the enactment of 52 George III., providing for the erection of a Penitentiary for the Counties of London and Middlesex on the land reconveyed by Mr. Bentham to the Supervisors.

It was begun in 1813, opened in 1816, but not completed before 1821, and cost over $2,000,000. It contained provision both for separate and for associated treatment of convicts, in two stages, beginning with the solitary cell; the second stage was abolished in 1832. Millbank, after the abolition of the hulks, was the depot from which convicts sentenced to transportation took their departure for Australia. It ceased to be a convict prison in 1886, and has since been destroyed.

The report of Sir William Crawford on the penitentiaries of the United States, made in August, 1834, led to the creation of the metropolitan prison at Pentonville, for five hundred prisoners. This was meant to be a model prison, on the separate system, with the reformation of offenders as its avowed aim. It was begun April 10, 1842, and in its construction the radiating plan of the Eastern Penitentiary at Philadelphia was followed. The hulks and Millbank had been used as substitutes for transportation; Pentonville was meant to be a preparation for transportation.

At this time, two distinct stages of punishment were recognized, namely: eighteen months of separate confinement at Pentonville, followed by exile to Australia. Tickets-of-leave were not granted in England, but could be granted in the colony. Eighteen months was found to be too long a term of isolation, and the time was subsequently reduced to nine months; afterward, an intermediate stage of imprisonment was introduced, which was served in a different prison, organized on the principle of separation by night and associated labor by day, on the Auburn plan; and transportation with a ticket-of-leave was made a reward for good conduct in the prison.



GROUND PLAN OF MILLBANK PENITENTIARY.

a Chapel.
b Hexagon.
c Pentagons.
d Entrance.
e Boundary Wall.

Penal servitude, established in 1847, as a preparation for transportation, was, in 1857, when transportation was by law formally abandoned as a punishment, made a substitute for it. Then began the erection of great public works prisons. Portland was opened in 1847, Dartmoor in 1850, and to these have now been added Chatham and Portsmouth, where convicts are employed in enlarging the docks. The original theory of English criminal law was that, of all secondary punishments (by which are meant punishments not capital), transportation was the most severe; but it came to be believed that servitude in a public works prison was more severe than transportation, as is proved by the fact that four years in such a prison was made the equivalent of seven years' service in Australia.

So much for the English prisons. The necessity for building prisons in England would have been avoided, if the people, first of the United States and then of Australia, had not absolutely refused to allow the deportation of convicted felons to those countries.

The next point to be considered is the reaction of Australian methods of dealing with convicts upon the prison system at home. Commodore Phillip, as has been shown, was given the right of conditional pardon, as Governor of the Colony. The lack of any prison structure made it necessary to work the men in gangs; hence arose the system of progressive classification, which was developed in Australia to a high degree of perfection. The final stage of penal servitude was that of conditional liberation on a ticket-of-leave, which was an Australian invention. The effect upon English criminal legislation is very apparent. The Act of 1847 cre-

ated four stages of imprisonment, namely: (1) cellular confinement in complete isolation, not exceeding nine months; (2) probation, in England, in a public works prison; (3) transportation to Australia, with a ticket-of-leave or the promise of one upon arrival; (4) absolute liberation, at a period to be determined by the amount earned by the convict while on ticket-of-leave. Thus transportation, which had at first been considered the most dreadful of punishments except that of death, came to be regarded as a reward for good conduct while in prison. The period of probation in public works prisons was given the title of penal servitude, which is equivalent to the French *travaux forcés* or the American "imprisonment at hard labor." At Portland, prisoners were divided into several classes, distinguished by different dress, and promotion from one to another was earned by good conduct. The labor, which was in the open air, was in common. Here we have many of the characteristic features of the graded prisons of our own day, barring that of marks, which was also an Australian invention, the history of which must now be recounted.

Norfolk Island, four miles long by three miles in width, was the principal penal settlement, to which the worst convicts were sent. Of about fifteen hundred on the island, probably two-thirds had been "doubly convicted," that is, convicted in Australia of some criminal offence there committed, while under sentence of transportation. In point of natural beauty, the island was a Paradise, but the conduct of the men banished to it was indescribably bad; they were given up to murder and all unnatural crimes. Upon one occasion, a witness in a murder trial professed to have seen so many

murders on the island, that he could not remember the one in question; he said that he had seen men "cut up like hogs by a butcher." The punishments were so severe, that men would sometimes commit murder, for the sake of being transferred to Sydney, for trial, in the hope that the chance might present itself of escape on the voyage, or that the witnesses might so escape. It was not uncommon for small parties to escape to the woods; and once a number of prisoners, who had so effectually hidden themselves as to be indiscoverable, on being reduced to starvation, ate six of their comrades, rather than return and give themselves up. Mutinies were frequent. It was testified before the Parliamentary Committee that, after one of these mutinies, seven men sentenced to death, on account of their part in it, dropped upon their knees and thanked God that they were at last to be delivered from the sufferings of life on Norfolk Island.

Hither, in 1840, came, as superintendent, Captain Alexander Maconochie, of the Royal Navy. In Van Diemen's Land, according to his own sworn statement, he "had witnessed the dreadful state of depravity in which the men in the public gangs were sunk," and the idea occurred to him, that "it arose from the state of slavery to which they were reduced," which led him to "think of the expedient of marks as a form of wages, by which the state of slavery might be obviated, and still the act of punishment not lost." This plan of managing prisoners had been brought by him to the notice of the Transportation Committee of the House of Commons, in 1837.

The first voice raised against time sentences was that

of Archbishop Whately, of Dublin, in 1832, who suggested that the convict, instead of being imprisoned for a certain length of time, should be sentenced to perform a certain amount of work; he would substitute, for time sentences, labor sentences, in the belief that the change would be an improvement.[1] Whether the writings of Whately had fallen under Maconochie's eye is not known; but his suggestion was in the same direction.

Maconochie proposed to the Committee "that the duration of sentences be measured by labor and good conduct, with a minimum of time but no maximum; that the labor thus required, being represented by marks, a certain number of these, proportioned to the original offence,

[1] "The plan which, as far as I am competent to judge, seems to me, on the whole, to promise the most favorably, is that which is suggested in the *London Review*, but which has not, that I know of, been hitherto anywhere tried; viz., that of requiring, of such criminals as are sentenced to hard labor, a *certain amount of work*: compelling them indeed to a certain moderate quantity of daily labor, but permitting them to exceed this as much as they please; and thus to shorten the term of their imprisonment, by accomplishing the total amount of their task in a less time than that to which they had been sentenced. I would also allow them, for a certain portion of the work done, a payment in money: not to be expended during their continuance in prison, but to be paid over to them at their discharge; so that they should never be turned loose into the world entirely destitute. Instead of being sentenced to confinement for a fixed time, they should be sentenced to earn, at a certain specified employment, such a sum of money as may be judged sufficient to preserve them, on their release, from the pressure of immediate distress; and orderly, decent, submissive behavior during the time of their being thus employed, should be enforced, under the penalty (besides others, if found necessary) of a proportionate deduction from their wages, and consequent prolongation of their confinement." — Letter to Earl Grey, 1832.

The article in the *London Review*, to which Archbishop Whately refers, was written by himself, and appeared in 1829. It is quoted in "Suggestions for the Repression of Crime," by Matthew Davenport Hill, p. 474.

be required to be earned in a penal condition, before discharge; and that, according to the amount of work rendered, a proportion of them should be credited day by day to the convict, and a moderate charge be made, enough for all provisions and other supplies issued to him; should he misconduct himself, a moderate fine be then imposed on him — only the clear surplus, after all similar deductions, to count toward his liberation." By this means he "sought to place the prisoner's fate in his own hands, to give him a form of wages, to impose on him a form of pecuniary fines for his prison offences, to make him feel the burden and obligation of his own maintenance, and to train him, while yet in bondage, to those habits of prudent accumulation which after discharge would best preserve him from again falling." On assuming the charge of Norfolk Island, he introduced, apparently on his own responsibility, and as an aid to good government, the mark system which he had devised, and which had received from the Parliamentary Committee a qualified approval. It was absolutely new and untried.

The story of his achievement, with its aid and by his personal power and tact, in reducing a turbulent population to comparative order, in four years, is interesting and instructive, but is omitted, in order that the attention of the reader may be concentrated upon the mark system and Maconochie's relation to it. Every convict was debited by him with a certain number of marks, according to the character of his offence, which he must redeem, before being recommended for conditional liberation. Instead of issuing the prescribed quantity and kind of government rations, he credited each man with a

certain number of marks per day, for his subsistence, to which he assigned an arbitrary pecuniary value, and the prisoner was at liberty to exchange them at their nominal face value for food and other supplies, at the Government Depot. Marks were earned by good conduct and by labor; intellectual marks were also given to those engaged in the prosecution of their studies; and the surplus above the amount charged for maintenance went toward the purchase of more speedy liberation. The effect upon discipline was so extraordinary, that Maconochie himself said, "I found Norfolk Island a hell, but left it an orderly and well-regulated community."

He was afterward for a time Governor of the Birmingham Gaol, in England, where he put the same system in operation; but, inasmuch as the law did not recognize task sentences, the difficulties in his way were insuperable, and he appears to have been officially looked upon as a failure — apparently with little justice. He seems to be one of England's unappreciated and partially forgotten worthies.

The mark system, however, went into the English code, after Sir Walter Crofton had first experimented with it in Ireland. Crofton borrowed it from Maconochie.

In the mark system now in use in England, the highest number of marks that can be earned is eight per day. The first year is regarded as a period of probation, and is spent in a solitary cell: the minimum number of marks which will entitle the prisoner to pass into the next stage, which is called the third or lowest grade, is seven hundred and twenty. Eight marks per day, or two thousand nine hundred and twenty in the year, earned in the third grade, entitle him to promotion to

the second or intermediate grade; and the same number there earned advance him to the first grade, in which there is a higher sub-class called "special." Should he fail to earn the full tale of marks demanded for promotion within the year, he remains in the lower grade until they have in fact been acquired. During the year of probation, the convict earns no money; in the lowest grade, he earns one shilling per month; in the intermediate grade, a shilling and sixpence; in the highest grade, half a crown. In the lowest grade, prisoners are allowed to receive visits from their friends but twice during the year; other distinctions in privileges are made as to diet, exercise, and correspondence. The convicts in each grade wear a different uniform dress. There is a "star class," selected entirely from first offenders, in which a red star is worn on the breast. The provisions as to grades in the local jails are similar, but the number of marks required for promotion is there only two hundred and twenty-four. During the first stage, the prisoner sleeps on a plank, without a mattress; in the next, he has a mattress five nights in the week; then six; and in the highest grade, every night.

The Irish or Crofton system was somewhat different. The English graded system recognized three stages, solitary imprisonment, labor in association, and transportation; when transportation was abolished, the third stage was altered to release, in England, on a ticket-of-leave. Sir Walter Crofton, the Director of Irish Convict Prisons, who was made a baronet for his services as such, and who certainly exhibited great talent as an organizer and governor of prisons, introduced a fourth

stage. The period of cellular incarceration was served at Mountjoy, where there was a prison in two departments, one for men and one for women. The second stage was that of "progressive classification," a phrase of which he was the author. His male prisoners were transferred from Mountjoy to Spike Island, where they were divided into five classes; the probation class, third, second, and first classes, and the advanced class. The probation class could be skipped by prisoners who had made a good record at Mountjoy. The majority of those transferred were placed in the third class, where they had to earn nine marks per month for six months, or fifty-four marks in all, as the condition of promotion. The number of marks to be earned in the second class was the same; and in the first class, twice as many, so that they could not pass from the first to the advanced class in less than one year. Under the English system, they would then have been entitled to a ticket-of-leave, but Sir Walter would not grant it until after a test had been applied, in a condition of comparative freedom, at a third prison, called an intermediate prison, at Lusk, where they slept in movable iron huts and were occupied almost precisely as freemen would have been, in farming and manufacturing. The prison at Lusk had neither bars, bolts, nor walls. Its aim was to make practical proof of the prisoner's reformation, his power of self-control, his ability to resist temptation, and to train him for a considerable period — never less than six months — under natural conditions, and so to prepare him for full freedom by the enjoyment of partial freedom as a preliminary step. The success of Lusk was largely due to the extraordinary capacity of the

teacher there employed, Mr. Organ, whose name is famous in prison annals. The female prisoners served the second stage of progressive classification at Mountjoy; but were transferred, for the third or intermediate stage, to Golden Bridge, three miles from Dublin, which was a Refuge, presided over by a Sister of Charity. Since Sir Walter Crofton ceased to be the Director of Irish Convict Prisons, the English Government has abolished the intermediate stage.

The only place where the Irish system can now be found in its entirety is at Lepoglava, in Hungary, where it has been organized under Mr. Tauffer, who there conducts one of the great and successful prisons of the world. The convicts are divided into three grades. Those in the first grade are subjected to a strictly cellular *régime.* In the second grade, they work in association. On reaching the third (or intermediate) grade, they occupy cottages, at a considerable distance from the main prison, resembling those inhabited by the Croatian peasants. These cottages have neither bars nor bolts, and there are no guards other than the overseers of the work of the prisoners. The fourth and final stage is one of conditional liberation.

The mark system has of course been imitated in the English Colonies. It is also found in the prisons of Denmark, Hungary, and Croatia.

CHAPTER X.

THE ELMIRA SYSTEM.

THE state of American prisons, twenty-five years ago, was far from satisfactory. The discipline in most of them was either severe to the verge of cruelty, or lax to the point of weakness, according to the ideas and sentiments of the wardens in charge. The wardens were appointed almost wholly for political reasons, and were subject to change with every alteration in the political complexion of the State governments. Comparatively few of them were really competent for their position, and they did not, as a rule, remain in office long enough to become thoroughly acquainted with their duties and qualified to perform them. The majority of them openly professed a disbelief in the possibility of convict reformation. The prisons were great manufacturing establishments, operated by prison contractors for personal profit. The State took little interest in the fate of the sentenced, except to insist that they must be made to pay, as nearly as possible, for their own support by their labor. The best warden, in the popular estimation, was the man who could show the best balance-sheet at the end of the year; and the financial test was the principal test of the excellence of prison management.

The change which has taken place is largely due to the exertions and influence of the Rev. Dr. E. C. Wines,

he able and devoted secretary of the New York Prison Association, by whom the National Prison Association was organized, at a Congress held in Cincinnati, in 1870, from which the era of recent prison reform in America may be fairly dated. Associated with Dr. Wines was a noble group of men and women, among whom it might be regarded as invidious to name individuals, with one or two exceptions, notably Dr. Theodore Dwight of New York, Mr. F. B. Sanborn of Boston, and Mr. Z. R. Brockway, then of Detroit but now of Elmira. The gentlemen named were all partisans of the Irish system, which they wished to see transplanted, and which they believed it possible to modify so as to adapt it to our political conditions. The creation of the New York State Reformatory at Elmira, in 1869, afforded them the opportunity which they coveted, and it was there that the new prison system about to be described (apparently the coming system of modern civilization) was virtually created.

Dr. Wines had been much impressed by the published accounts of the results of the reformatory experiments made by Montesinos in Spain, and Obermaier in Bavaria.

Colonel Montesinos was appointed, in 1835, Governor of the prison at Valencia, which was an old Augustinian convent containing from a thousand to fifteen hundred convicts. He organized it on the military system, dividing the population into companies, and appointing prisoners to be inferior company officers. He encouraged convicts to learn trades, of which he had at one time fully forty in operation at once; they did all the prison work besides. The workshops cost the government nothing, and one-half the earnings were appropri-

ated to the support of the prison. There was in this prison a school, which boys under twenty were obliged to attend for one hour daily; and any prisoner above that age, who desired to do so, might join the classes. With no guards, except a dozen old soldiers, there were nevertheless few escapes. The great hold which Montesinos had upon his men, apart from his personal character and ability, consisted in the fact that they could, by good behavior, reduce the term of their sentence by one-third. The number of recommitments, while he was Governor, fell from thirty-five per cent to a figure which it would be imprudent to name, lest it should not be believed. The law was subsequently changed, so as to require all prisoners to serve their full time, and in an instant the system collapsed. Montesinos resigned; he was subsequently made Inspector-General of all the prisons in Spain, but he was powerless to reform them. In a pamphlet which he published in 1846, he said: —

"What neither severity of punishments nor constancy in inflicting them can secure, the slightest personal interest will obtain. In different ways, therefore, during my command, I have applied this powerful stimulant; and the excellent results it has always yielded, and the powerful germs of reform which are constantly developed under its influence, have at length fully convinced me that the most inefficacious methods in the prison — the most pernicious and fatal to every chance of reform — are punishments carried the length of harshness. The maxim should be constant and of universal application in such places, not to degrade further those who come to them already degraded by their crimes. Self-respect is one of the most powerful sentiments of the human mind, since it is the most personal; and he who will not condescend, in some degree, according to circumstances, to flattery of it, will never attain his object by any amount of chastisement; the effect of ill-treatment being to irri-

tate rather than to correct, and thus turn from reform instead of attracting to it. The moral object of penal establishments should be not so much to inflict punishment as to correct, to receive men idle and ill-intentioned and return them to society, if possible, honest and industrious citizens."

Obermaier was made Governor of the prison at Kaiserslautern, in Bavaria, in 1830; in 1842, he was transferred to Munich, where he found between six and seven hundred prisoners chained together, dragging heavy weights, in a state of riotous insubordination, and kept in order by about one hundred soldiers, who were distributed not only on the walls, but in the passages, in the shops, and in the dormitories. In a very short time this wonderful man had gained the confidence of his men, taken off their chains, discharged nearly all the guards, and appointed a convict superintendent of each of the shops. His success in reforming prisoners was so great, that only about seven per cent of those at Kaiserslautern, and ten per cent of those at Munich, relapsed into crime after their discharge. He was aided by two favoring circumstances, of which the first was that many of the men were sentenced, at that early date in Bavaria, to simple imprisonment for no fixed term; and the second, that there was a thorough supervision of discharged convicts, supplemented by the labors of numerous active prisoners' aid societies.

The aim of Sir Walter Crofton in creating the Irish prison system was the reformation of prisoners; he thus placed himself historically by the side of Montesinos and Obermaier. England, in adopting it, laid too little stress upon its reformatory influence: the main idea of the English penal system is that of repression by ex-

emplary punishments. The Irish system was much admired by students of penology in various parts of the world, and nowhere more than in the United States. Messrs. Wines and Dwight, in a historically important report made by them to the Legislature of New York, January 8, 1867, on the Prisons and Reformatories of the United States and Canada, said: —

"We have no hesitation in expressing the opinion that what is known and has become famous as the Irish system of convict prisons is, upon the whole, the best model of which we have any knowledge; and it has stood the test of experience in yielding the most abundant as well as the best fruits. We believe that in its broad, general principles — not certainly in all its details — it may be applied, with entire effect, in our own country and in our own State. What, then, is the Irish system? In one word, it may be defined as an adult reformatory, where the object is to teach and train the prisoner in such a manner that, on his discharge, he may be able to resist temptation and inclined to lead an upright, worthy life. Reformation, in other words, is made the actual as well as the declared object. This is done by placing the prisoner's fate, as far as possible, in his own hands, by enabling him, through industry and good conduct, to raise himself, step by step, to a position of less restraint; while idleness and bad conduct, on the other hand, keep him in a state of coercion and restraint."

It was under the inspiration of this thought, that the New York Prison Association urged the creation, in that State, of an intermediate prison on the reformatory plan.

Mr. Brockway furnished a paper[1] for the Twenty-

[1] Mr. Brockway's utterance, in this paper, of a desire for the abolition of term sentences, it will be observed, is subsequent to the Report of Messrs. Wines and Dwight, in which they had already said: "This whole question of prison sentences is, in our judgment, one

fourth Annual Report of that Association (1868), in which he said: "Legislation is needed, to abolish the peremptory character of the sentences imposed upon persons committed to these establishments." And again, "Persons whose moral depravity makes them a public offence should be committed to properly organized institutions until they are cured." The Legislature of New York, in 1868, provided for the appointment of a Commission to select a site for a new State Prison. At the suggestion of the New York Prison Association, the bill was so amended as to designate the new institution a Reformatory. The Commission reported in 1869: —

"We propose to make the sentences (to the Reformatory) substantially reformation sentences. It has been a favorite theory of that distinguished criminal judge and philanthropist, Mr. Recorder Hill, that criminals should be sentenced until they are reformed, which may, of course, turn out to be for life. While we do not propose to recommend this rule in full, we think that it may be safely tried in a modified form. We propose that, when the sentence of a criminal is regularly less than five years, the sentence to the Reformatory shall be until reformation, not exceeding five years."

The act establishing the Elmira Reformatory was passed in 1869, one year before the assembling of the Cincinnati Congress, at the call of Dr. Wines, where Mr. Brockway read a paper (somewhat famous in the annals of American prison history) on the proper organization of a prison system for a State, in which he pre-

which requires careful revision. Not a few of the best minds in Europe and America have, by their investigations and reflections, reached the conclusion that time sentences are wrong in principle; that they should be abandoned, and that reformation sentences should be substituted in their place."

sented in germ nearly all the theories as to the nature and needs of the criminal, which he has since wrought into the spirit and life of that institution. In particular he planted himself upon the proposition that "sentences should not be determinate, but indeterminate." Dr. Byers, of Ohio, at the same Congress, spoke in favor of the establishment of intermediate prisons; and Mr. Sanborn discussed the possibility of introducing the Irish system in America.[1] The Elmira Prison was built

[1] The Cincinnati Congress adopted a Declaration of Principles, in thirty-seven paragraphs. In the first, punishment is defined to be "suffering inflicted on the criminal for the wrong done by him, with a special view to secure his reformation;" and in the second, it is said that "the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering." Other paragraphs are as follows: —

"III. The progressive classification of prisoners, based on character and worked on some well-adjusted mark system should be established in all prisons above the common jail.

"IV. Since hope is a more potent agent than fear, it should be made an ever-present force in the minds of prisoners, by a well-devised and skilfully applied system of rewards for good conduct, industry, and attention to learning. Rewards, more than punishments, are essential to every good prison system.

"V. The prisoner's destiny should be placed, measurably, in his own hands; he must be put into circumstances where he will be able, through his own exertions, to continually better his own condition. A regulated self-interest must be brought into play, and made constantly operative.

"VIII. Peremptory sentences ought to be replaced by those of indeterminate length. Sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time."

In other paragraphs of this remarkable paper, the doctrine is laid down that "In order to the reformation of imprisoned criminals, there must be not only a sincere desire and intention to that end, but a serious conviction, in the minds of the prison officers, that they are capable of being reformed;" that "a system of prison discipline, to be truly reformatory, must gain the will of the convict;" that

under an act passed in 1870, and subsequent acts, but was not ready for the reception of prisoners before 1876, when a board of managers was appointed, who elected Mr. Brockway superintendent. The first inmates were transferred to it, from the State Prison at Auburn, in July of that year.[1]

"the prisoner's self-respect should be cultivated to the utmost, and every effort made to give back to him his manhood;" that "in prison administration moral forces should be relied upon, with as little admixture of physical force as possible;" that "the most valuable parts of the Irish prison system are believed to be as applicable to the United States as to Ireland;" that "reformation is a work of time, and a benevolent regard to the good of the criminal himself, as well as to the protection of society, requires that his sentence be long enough for reformatory processes to take effect."

It was at this Congress that President Rutherford B. Hayes, then Governor of Ohio, enlisted for life in the cause of prison reform. Here, too, the steps were taken which resulted in the organization of the National Prison Association and the International Penitentiary Congress.

[1] In a work purporting to aim at historical accuracy, and in which an effort is made to show the genesis of the Elmira idea and how many individuals unconsciously co-operated to a common end, due credit should also be given to the Warden of Sing Sing Prison, Mr. Gaylord B. Hubbell, who, in 1865, at his own cost, made a thorough study abroad of the English and Irish prisons. An extended account of his observations and conclusions is printed in the Twenty-second Annual Report of the New York Prison Association, in which he said: "Can the Irish system be adopted to advantage in our own country? For my own part, I have no hesitation in returning an affirmative answer, with emphasis, to this question." He proceeded to sketch his conception of the best method of procedure in the attempt to introduce it, and proposed the purchase of a farm of two or three hundred acres *on the line of the Erie railroad*, and the erection upon the site selected of *a new prison*, to be organized *in three divisions* — each of which should have a special discipline. His first division he would have in solitary or separate confinement; the second division should work in association through the day, but be separated by night — in that the mark system should be in force; in the third division, with associated dormitories and no wall, all

There is in the organization of this Reformatory, and in the laws by which it is governed, nothing that is absolutely new. The novelty consists rather in the combination of principles whose validity had been separately recognized, and in the intense earnestness with which they have been here applied by a man whose enthusiasm for the reformation of convicts has in it a quality closely allied to genius. Somewhat unconsciously, perhaps, the methods adopted closely resembled those which had been long in use in institutions for the reformation of juvenile offenders. Indeed, it could not well be otherwise, since men are but children of a

the arrangements should be such as to give the largest possible freedom to the inmates. He said: "*A careful system of classification of prisoners should be made, based on marks*, honestly given according to their character, conduct, industry, and obedience. For it must be remembered, that a classified system of association without marks, and without impressing on the prisoner's mind the necessity for *progressive improvement*, is of little value." Again: "All prisoners sent to the proposed establishment should, under proper restrictions, be *allowed to work their way out*." Once more: "The Maconochie mark system, the gratuities, *the school teaching, the library, the course of lectures, competitive examinations, debates*, etc., etc., could all be introduced here as well, at least, and in my opinion much better than in Ireland." (The italics are not in the original, but are introduced to show how far Mr. Hubbell anticipated the methods followed at Elmira.)

Mr. Hubbell had been influenced by the brothers Hill, who also exerted an influence on the mind of Dr. Wines. They had been influenced by Captain Maconochie, who was Governor of the Birmingham Gaol while Matthew Davenport Hill was Recorder of Birmingham. The connection is clear. Mr. Hubbell was in charge of the leading prison of the State of New York. Dr. Dwight was vice-president and Dr. Wines secretary, of the New York Prison Association. Mr. Brockway was not a resident of that State, but Superintendent of the House of Correction in Detroit, Michigan. This was ten years before he was called to take charge of the completed prison at Elmira. In the light of facts like these, the opening sentence of

larger growth, and the methods which succeed at a youthful age, ought with the necessary modifications to succeed, though probably not to the same degree, with older men. The Australian inventions of marks, grades, and the ticket-of-leave, had been accepted by the English Government, which also borrowed from the United States her Pennsylvania system of cellular imprisonment by day and night for the first stage of penal servitude, and her Auburn system of separation by night only and employment in workshops by day, for the intermediate stage. In Ireland, Sir Walter Crofton went a step farther, and applied a practical test of the

Alexander Winter's book, "The New York State Reformatory at Elmira," is not warranted: "In the year 1876 Mr. Brockway, who, up to that date, had been for many years accumulating a wide and comprehensive experience in the administration of prisons, laid before the State Commission appointed for their management and inspection a plan of organization *worked out entirely by himself*, for the improvement and reform of criminals." The statement, a few lines below, "*Thus arose* the Elmira institution," is not true.

Mr. Havelock Ellis does not fall into this error, in his introduction to Mr. Winter's book, but speaks of "the founders of Elmira," in the plural. He is mistaken, however, in saying, as he does, that they "had no knowledge of the scientific movement that was arising in Europe." (See the critique upon Prosper Despine's "Psychologie Naturelle" and De la folie au point de vue philosophique ou plus spécialement psychologique," by Dr. Wines in the *Princeton Review*, May, 1878, reprinted in "The State of Prisons," pp. 641-660.) It is true that the founders of Elmira were not criminal anthropologists in the technical and narrow sense of that phrase; and Elmira was not, as Mr. Ellis claims, "the practical outcome of their studies." All that is fundamental in the Elmira system is wholly independent of the acceptance or rejection of their speculations as to nervous and mental action, heredity, evolution, or the existence and proof of a distinct anthropological type. The attempt to identify the two is an injury and not a benefit to the cause of prison reform, because it awakens prejudice against it in the minds of many who would otherwise be its friends. It is, moreover, wholly needless,

fitness of his men for conditional liberation, before granting them a ticket-of-leave. This consisted in employment in a condition approximating complete freedom. All of these ideas were imported from Australia and Great Britain into the Elmira system. They constituted, in fact, its base; but there was added to them another, which gave to the whole a wonderful vitality, and which is really the distinguishing feature of the system, namely, the so-called indeterminate sentence.

At this point, it is necessary to interject into the argument some observations concerning reformation and the means by which it can be effected.

What constitutes reformation? Not necessarily religious conversion. Reformation may stop far short of that, and yet be such a change of habits and character as to satisfy all reasonable legal or sociological expectation. On this point, the Reverend Mr. Burt, chaplain of the Pentonville prison, has pertinently remarked: —

"The result aimed at by a penal code is attained when, by whatever motive, the criminal is induced to restrain his vicious propensities within the limits which the law prescribes. Three influences, more or less distinct, may operate in producing this result. It may be one effect of religious conversion; it may arise from a general amelioration of the moral character; or it may be the result of prudential consideration, of intimidation, or of forethought. It is not often, I apprehend, that actual reformation can be exclusively referred to any one of these causes. The several influences usually co-operate, and one passes insensibly into another, though in different cases different motives predominate. In any case, however, the result is reformation."

He adds: —

"In the reformed criminal it would be unreasonable to expect impeccable piety or stoical fortitude; enough will have been

effected to merit the title of reformation, when the once habitual offender exhibits an average standard of virtue, under an average pressure of temptation."

For the purposes of the government, a criminal is reformed, who does not require to be rearrested, retried, and again incarcerated for some new violation of the criminal law.

The agencies by which this result is attained are three, namely, labor, education, and religion; and they correspond to the analysis of human nature as physical, intellectual, and moral. But the unity of human nature is such, that any influence which affects an individual in any part of his being affects directly or indirectly the whole man. And the relation between religion, labor, and education is so intimate, that they almost seem at times to be different names for the same thing. Labor and religion are both educational agencies; neither intellectual nor ethical development is possible without labor, and religion demands of every man, that by training and effort he shall make the most of himself, and do the most for the world, that the extent of his talents will permit.

Of these three, it is probable that the most certain to secure from every prisoner some measure of response is labor. Labor, if real and productive, is not only a means of bodily health and strength, but it compels thought, thus awakening and moulding the mind, and in many ways it reacts favorably upon the moral character of the workman. The abolition of prison labor, which, in their ignorance and greed, largely at the instigation of their employers, so many members of the trades-unions demand, (on the double ground that

convict and free labor are antagonistic, and that competition with the former is a degradation to the unconvicted), would throw our prisons back to the state in which they were, three or four centuries ago. The laboring class (if it is proper to speak of working-men as a class) would gain nothing by the change, since they would then have to support prisoners in idleness, at the cost of the public treasury. Prisoners, if unconvicted, would be compelled to enter the labor market: how does conviction for crime deprive them of the natural right to live by their own exertions? And what excuse has the government to offer for preventing them from earning their own support, and for levying contributions upon the innocent, to keep the guilty from starving? It has been repeatedly shown, by actual computation, that the competition of convict labor in the market is so small in comparison, as to exert no appreciable effect upon the demand for labor or upon wages. It may affect certain trades; and the policy of the authorities should be to select industries in which such competition is least, and to diversify to the largest practicable extent the industries pursued in prisons. But some degree of rivalry of interest is inevitable, whatever we may do; for anything that prisoners do might be done by outside labor, — even roadmaking or the manufacture of supplies for public institutions, both of which are just now rather popular fads. It is a strong phrase, but the consequences to the public of the forcible stoppage of labor in prisons must sooner or later be of such a serious nature, that it is not too much to say that the man who favors so violent a measure is an unconscious enemy of mankind. The reformatory influence of labor,

even in prisons which are managed for profit, and where the profits inure largely to contractors and not to the State, is so potent, that of men committed to an ordinary American penitentiary it is safe to estimate that one-half do not, after their discharge, relapse into crime.

Labor needs, however, to be supplemented by education in the common acceptation of that word, meaning development by educational processes skilfully applied to the training both of the head and the hand. Statistics prove that the number of prisoners without any trade education is greater than of those without a common school education. Some prisoners are highly educated men, but their number is relatively small. Owing to the division of labor in manufactories, a trade education is not necessarily obtained in the shops, hence the establishment of trade-schools in prison is desirable, on account of the opportunity which it affords of giving to prisoners such a knowledge of the use of tools as will qualify them for useful and profitable employment upon their discharge. The utility of literary and scientific teaching in prison, by lectures, books, and classes, consists not merely in the improvement of the mind, but in its occupation and diversion, that it may not be given over to introspection, vain regrets, impure imaginations, bitterness, and the planning of fresh criminal enterprises. It should not, therefore, be confined to elementary instruction in reading, writing, and arithmetic, but mental food should be provided for all tastes and capacities represented in the prison population at any given time. The old story is here in point of the Quaker visitor who said to an embittered convict, "Friend, thee should have better thoughts," to which

the prisoner replied, "Where shall I get them?" The positive value of education to the prisoner must not, however, be overlooked, especially on subjects concerning which (largely from the want of proper instruction) he is apt to cherish perverted notions. Four topics should be given a prominent place in the prison curriculum, namely: the principles (1) of law, generally, as a rule of conduct, and specifically, in its relation to crime; (2) of civil government, its necessity and utility; (3) of political economy, especially in its bearing upon the labor question and the means by which property is legitimately accumulated; (4) of practical ethics, or the mutual rights and obligations of men living in the social state.

In this connection, the following remarks by Mr. Michael Davitt are worthy of reproduction here. He expresses the opinion founded on his personal observation as a political prisoner, that "direct Scripture or moral teaching, either through religious works or the labor of prison chaplains, is all but useless with criminals." On the other hand, he believes that "no more efficacious reforming medium — apart, of course, from industrial occupation and habits — could be employed for the reclamation of all that is reclaimable in criminal lives, than a judiciously stocked prison library, in which the moral-teaching and wrong-punishing description of novel should be largely represented." He adds that "it is only what prisoners read, between labor hours in prison, that can come between themselves and their thoughts of crime past and reveries of criminal deeds to come."

No less important, certainly, is it to reach the heart

and touch the conscience of all who are susceptible to religious influence. The great Italian poet has shown by appropriate and impressive imagery the truth that there are three spiritual states in one of which must be found every human soul. The first is that in which the soul is in love with evil, does not perceive it to be evil, and attributes the pain which it endures to every cause but the right one — the return of an evil deed upon the doer of it. This is hell. The second is that in which the soul has recognized its sin, seeks to escape, and welcomes the pain of repentance as a purifying, purgatorial fire. Finally, having struggled with itself and gained the victory, having overcome the power of self-love, which creates discord between sister souls and between the soul and God, it accepts the divine order, the human and the divine wills come into sweet accord, and at last it reaches the state of paradisaic rest and everlasting joy. There are multitudes of convicts who, in Dante's sense, are still in hell: how are they to be delivered? Born without moral sense, or having impaired, if not destroyed, the faculty of conscience, by its neglect or abuse, they are spiritually blind to the true nature of their own actions and relations. It seems a hopeless task, to renew in them the faculty of moral insight. Yet it must be undertaken, and for its accomplishment our hope is in God, the creator and the re-creator of the spirit that is in man. Physical and intellectual culture may contribute to the end in view; but without the appeal to conscience, in the name of God, without picturing to the tempted the parting of the ways which lead to death or to life, without holding before their minds judgment and mercy, destruction and

forgiveness, and urging them to decision, in the light of eternity and of their personal accountability to the Judge of all the living and of the dead, the central spring of moral activity will not have been reached, and any reformation which may take place will be superficial or evanescent.

An American prison chaplain, comparatively new to the duties of his position, was sneeringly asked by an officer how many of the prisoners he had converted by his ministrations. He replied, "The same percentage, I think, as of the prison officials."

If the relation of the foregoing observations to the indeterminate sentence is not self-evident, it can readily be made apparent. Crime is the measure of the criminal's opposition to social institutions and of his incapacity to adapt himself to them. If the institutions happen to be wrong, he may be right; but he must bear the consequence of his deed. What society demands of him is submission. The discipline of the criminal law is designed to subdue or convert his will, so as to make it conform to the will of the social whole. Subjugation was the old idea; conversion is the new. The effort to break a prisoner's will proceeded on the theory that he was a man of exceptional strength, and dangerous for that reason; the effort to enlighten and persuade it assumes that precisely the contrary is the truth, that the criminal is an exceptionally weak man, incapable of self-direction and self-control, to whom it is necessary to impart power, but power for good, not for evil. He therefore needs to be studied in a state of incarceration, to discover what is his special weakness, whether it is in his physical, mental, or moral constitution, in order

that the treatment to be given him may correspond to his actual condition and needs. But no treatment will produce the best result, unless the consent and co-operation of the criminal patient are secured. For this an adequate motive, to which he will be likely to respond, is essential. The average criminal is an egotist, who has more faith in his own perverted instincts than in the advice and assurances of wiser and better men; he is a creature of habits which he cannot easily shake off; he does not want to be morally awakened and renovated; he sets himself in opposition to every influence which will elevate him and make him ashamed of his past and sorry for it. Ordinary persuasion is for the most part thrown away upon him. The only motive which is sure to affect him, in proportion to his intelligence, is the hope of freedom. That hope springs eternal in the convict's breast, but it ordinarily assumes the form of vague expectation of a pardon, or of a favorable chance to escape. If he can be convinced that these anticipations are fallacious, but that he will be released as soon at it shall become apparent to the officers who have him in charge that society has no longer anything to fear from him, and that he can convince them of this fact by his own conduct in prison, from that moment his will is gained, and the rest is comparatively easy. As Maconochie expressed it, "When a man keeps the key of his own prison, he is soon persuaded to fit it to the lock."

The indeterminate sentence, therefore, puts into the hand of a competent and devoted prison superintendent the precise lever that he requires, in order to subvert the criminality of the convict, assuming that it can be

subverted. It is merely a tool. It is of no value if not used, or in the hand of a man who does not know how to use it. It has in itself no reformatory power; it is a dead thing. The real power is in the reformatory agencies which have been named — labor, education, and religion. These, if applied, will produce the same effect under a definite as under an indefinite sentence: the difference is that, under the latter, the prisoner ceases to resist their application, and may even be induced to apply them to himself. It puts him in the most favorable attitude to be operated upon, in the condition most favorable to a cure.

The history of the evolution of the conception of the indeterminate sentence is interesting and instructive. Punishment must be admitted to be a natural reaction against wrong. In the early stages of social evolution, when the retributory principle was uppermost in the thoughts of men, retribution meant the return to a private or public enemy of an exact equivalent for the injury suffered at his hands; and in an exact equivalent there was no room for variation within specified limits. When composition of injuries was admitted as an indirect mode of retaliation, more satisfactory on the whole to both parties, the substitute payment to be made by the offender to the offended party was a matter of bargain between them, and the sum to be paid a fixed sum, which could be neither increased nor diminished. When the State took the regulation of private quarrels upon itself, it inflicted upon the guilty the penalty of death, which was a fixed penalty, or usually some other definite amount of loss, like the loss of a finger or an eye, or the infliction of a given number of stripes. Recur

for a moment, too, to the slow growth of political institutions, the division of power first between the executive and legislature, then the development of courts out of legislative committees, resulting at last in the separation of the judiciary. Remember that imprisonment was not itself a penalty for crime, until within a very recent period in the history of the world. Imprisonment, like torture, is an elastic penalty, capable of abbreviation or prolongation. Discretionary power to terminate it at some fixed point must be lodged somewhere.

At first, this power was retained and exercised by the legislature. Absolute penalties were the rule — definite terms of imprisonment for specific acts, regardless of extenuating or aggravating circumstances; or an attempt was made in the code to define and estimate at their true value such circumstances. All early criminal codes were fixed codes, with fixed penalties.

The evil of fixed penalties, however, can never be long hidden, even from averted eyes. Especially clear is the impossibility of such foresight on the part of the law-making body as will enable it to apportion punishment adequately and justly, in accordance with the many varying degrees of guilt, estimated by the double standard of the culprit's intention and the amount of the injury done. We find, therefore, the evidence of a certain shrinking, on the part of legislatures, from a task for which they feel themselves incapable, in the attribution by them to the criminal courts of large discretionary powers in the infliction of punishment, within certain prescribed minimum and maximum limits. In this country, at least, the growing tendency of legis-

latures is to reduce the *maxima* and do away with the *minima*.

The question now arises, how have the courts acquitted themselves, in fact, of this responsibility? The difficulty has not been gotten rid of; it is only removed. It was supposed, no doubt, that judges, with all the evidence before them, could make tolerably correct estimates of guilt and suffering, and that they could apportion the one to the other with sufficient accuracy to insure, in most cases, some degree of approximation to equivalence between the two. Has this expectation been realized? It is susceptible of demonstration that it has not. It was an unreasonable expectation at best. Admitting for the moment that a correct human measurement of guilt or of suffering is possible, was it to be expected that the most protracted and searching criminal trial would reveal all the attending circumstances of each criminal action — the precise degree of the prisoner's legal and moral responsibility, measured by his ability to characterize his own conduct and to control it, or by the peculiar stress of temptation or provocation under which the act was committed? the precise degree of the injury done to individuals and to the community? the exact menace to society involved in a merciful sentence? If not, (and still more, if the judge should prove to be impulsive or fickle in his temper, or if the jury and not the judge should be entrusted with the determination of the length of sentence), how could the grossest inequality and even inequity in the apportionment of punishment to different individuals be avoided? It has not been avoided. The experience of all prison officers affords countless illus-

trations of the glaring contrasts between sentences pronounced for the same or different offences upon prisoners convicted in different courts, or in the same court on different days; contrasts most exasperating to such sense of justice as is found in the breasts of convicts, and calculated greatly to diminish their respect for law and therefore their disposition to obey it. One instance, in the State of Illinois, will serve by way of illustration, instead of thousands, where two juries sat upon the case of two burglars convicted separately of robbing the same store on the same night, in partnership with each other, and one of them was sent to the penitentiary for one year, the other for three years. But more striking still is the evidence accumulated in the Eleventh Census of the United States as to the inequality in sentences in different States, often adjoining each other and alike in all essential political and social conditions. The average sentence in one State, for all offences, has been proved to be more than double that in another; and the want of congruity in sentences for different crimes, in detail, in different localities, is amazing to contemplate. It does not seem to be the fault of the codes, so much as of the courts, if it is a fault. But, upon its face, it is the condemnation of the entire system of fixed sentences for particular criminal acts.

All definite sentences may be assumed to be unjust, either by way of excess or of defect. They are also inexpedient. Short sentences fail in many cases to make any impression other than one of indifference to imprisonment: they beget a class of minor recidivists known as rounders or repeaters or revolvers, who are

continually in and out of prison, which becomes their principal place of abode. A man named "Silly Kelly" died in Edinburgh, in 1872, at the age of eighty-two years, who had been convicted of drunkenness and other petty offences three hundred and fifty times; it was estimated that he had spent more than forty years of his life in prison. Mr. Frederick Hill has officially reported the case of a man in Scotland, who was convicted more than one thousand times. The superintendent of the New York City Workhouse, on Blackwell's Island, once said to the author of this book, "We have prisoners who are repeatedly committed, on the charge of drunkenness, for the uniform term of thirty days. When their term expires, they return to the city, immediately proceed to drink again to intoxication, and are recommitted on the day following. Our guards are allowed, by our rules, one day off each month; and, really, the only difference between the guards and the prisoners, in this respect, is that the latter are locked up, while the guards are not." Long sentences, on the other hand, especially life sentences, depress the convict too much, by depriving him of any well-founded expectation of any end to the weary routine of a life without object or stimulus, except in the grave.

Definite sentences are never reformatory, since they are in fact retributory, and are founded on the character of the act, which is past, having occurred prior to the sentence, and is therefore irrevocable. Reformatory sentences can be based only upon the character of the actor, which it is desired to correct, but the time required to alter it cannot be estimated in advance, any more than we can tell how long it will take for a lunatic

to recover from an attack of insanity. There is an analogy between crime and insanity, which may be pushed to an extreme, yet is useful for our present purpose.[1]

[1] The analogy between crime and insanity was the theme of an extemporaneous address made by the author, in 1886, to the inmates of the Elmira Reformatory, of which the following were the heads: —

1. The basis of insanity is physical, its manifestations are physical, mental, and moral. The same is true in large measure of criminal propensities.

2. Insanity and crime are both hereditary — to what extent is not definitely known. The predisposition to both is often congenital.

3. The approach of insanity and the growth of criminal character are alike gradual, in many instances, and unsuspected by the victim of either.

4. The change from innocence to depravity corresponds with the alteration in personal character observable in the insane.

5. The lunatic and the criminal both form theories, to account for the perversion of which they are more or less conscious, which are very far removed from the truth.

6. The manifestations of insanity assume one of two opposite forms — undue exaltation or undue depression; in either form they present the appearance of a pronounced self-consciousness, amounting to egotism, and often accompanied by hallucination or delusions. In this particular the resemblances between insanity and crime are striking.

7. As insanity tends to make progress and to end in dementia, so does the habitual criminal sink into moral imbecility — the complete loss of moral perception, depravation of moral tastes and inclinations, and paralysis of volition.

8. Insanity and crime are both the occasion of intense pain, succeeded by insensibility or indifference.

9. Both incapacitate their subjects for normal social life; and both are treated by incarceration, if of a dangerous or troublesome type. The motive of such treatment is twofold, the cure of the patient and the protection of the community.

10. The cure of either is difficult: much depends on beginning in time, and, for success in the effort to develop the power of self-restraint or self-direction (which may have been originally lacking, or lost by disuse or abuse), the co-operation of the patient is indispensable.

Except upon the theory of retribution, why should a criminal be sent to prison for a definite period of time, any more than a lunatic to a hospital for the insane? Is the protection of society more effectually secured by an unsuccessful attempt to satisfy an abstraction, or by the seclusion of a dangerous element in the community until the convict, in the judgment of experts, who have him under constant and prolonged observation, has ceased to be such? As to the retributory theory of criminal law, it need only be said that crime and penalty cannot be adjusted to each other, unless we first find some accurate measure of guilt on the one hand and of suffering on the other, which seems to be impossible.

Regarded in this light, the whole present basis of the criminal law appears to be unsound — ethically, medically, and legally: the verdict of the three learned professions against it, when finally delivered, will probably be unanimous.

The alternative, if imprisonment is to be retained as the only secondary punishment, (for fines, though they are theoretically an alternative form of punishment, are commutable into equivalent terms of imprisonment), is the substitution of indefinite for definite sentences.

Archbishop Whately said, in a letter to Earl Grey, in 1832: —

"It seems to me entirely reasonable that those who so conduct themselves, that it becomes necessary to confine them in houses of correction, should not be turned loose upon society again, until they give some indication that they are prepared to live without a repetition of their offences."

Maconochie agreed with Whately in his preference for task sentences rather than time sentences, and gave his reason in the following words: —

"The purpose of this is to make the man's liberation, when he is once convicted of a felony, depend upon the subsequent character and conduct evinced by him, rather than on the original quality of his offence."

The first voice, however, raised in favor of distinctively reformation sentences was that of Mr. Frederick Hill, Inspector of the Prisons of Scotland, in the following words, in a report made by him in 1839: —

"As regards the question, how are convicts to be disposed of after their release from prison, supposing transportation to be abolished, I would humbly suggest that it is desirable that those whom, from the nature and circumstances of their offences, as shown upon their trial, there can be no reasonable hope of reforming, should be kept in confinement through the remainder of their lives; the severity of their discipline, however, being relaxed in various ways, which would not be safe, were it intended that they should return again to society."[1]

His brother, Matthew Davenport Hill, the eminent Recorder of Birmingham, reduced this principle to the epigrammatic formula, "Reformation or incapacitation," meaning thereby that if a prisoner fails to reform, under proper influences, and remains a peril to social order and security, he should be held for life.[2]

[1] In Mr. Frederick Hill's book on "Crime," (1853) he refers, in a foot-note to page 150, to "the plan of using a prison as a kind of moral hospital, to which offenders shall be sent until they are cured of their bad habits" as having been "recommended by Mr. Simpson, of Edinburgh, in a paper on the 'Treatment of Criminals,' which appeared in the *Law Magazine* many years ago."

[2] "The school of criminal jurists, to which I belong, have not deserted received opinions on light grounds; or sought for new principles until the failure of the old ones for the production of good

This was in 1846. The same year, at the opening of the Civil Tribunal of Rheims, M. Bonneville de Marsangy delivered a memorable discourse on Preparatory Liberation, in which the same thought was elaborated and defended. He defined preparatory or conditional liberation to be "a sort of middle term between an absolute pardon and the execution of the entire sentence; the right conceded to the judiciary, to release provisionally, after a sufficient period of expiatory suffering, a convict who appears to be reformed, reserving the right to return him to the prison, if there is against him any well-founded complaint." He especially pointed out that this was the method of dealing with juvenile offenders already accepted by the French law, and equally applicable to adults.[1]

practical results had been demonstrated by centuries of experiment, varied until the wit of man had exhausted all the possibilities of permutation. What course then remained for choice? None within the scope of my imagination, save two. First, such treatment as incapacitates the criminal from the commission of offences, leaving at the same time his appetites and passions unsubdued, and his desires unchanged; or, secondly, a treatment which has for its object to reform him, by leading him to yearn after good instead of evil, and by so training his habits as that he shall be able to give effect to his new aspirations. We are reduced, in short, to *Incapacitation* or to *Reformation*. Both these expedients, it must be admitted, are of very humble pretensions, when contrasted with the ambitious aims of deterrent punishment. Incapacitation limits itself to preventing the criminal from repeating his offence; either for a time, as when imprisonment is employed, or forever, as by the infliction of death. But as we are in no wise friendly to capital punishment, we would only use incapacitation as furnishing the opportunity for exercising reformatory action on the criminal; or, in extreme cases, for withholding from society one who has resisted all endeavors to approve him." — *Letter of M. D. Hill to C. B. Adderly, Esq., M. P.* (1856).

[1] In 1847, M. Bonneville (who was *procureur du roi* at Versailles) elaborated his thought in a work entitled "Traité des institutions

Mr. Brockway accepted this principle, as did many other American students; but he did more. He secured its incorporation into American law, first in Michigan, in 1868, in the passage of the so-called Three Years' Law, applying to prostitutes, which authorized their commitment to the Detroit House of Correction for an indefinite term, not exceeding three years, and had for its immediate effect a general exodus of women of that class from that city. Subsequently, in 1876, he drafted the original statute directing the sending of young first offenders to Elmira under an indeterminate sentence, not

complémentaires du régime pénitentiaire" (An essay on the institutions complementary to the penitentiary system), in which he discussed the pardoning power, conditional liberation, police surveillance of discharged convicts, patronage (aid to discharged convicts), and rehabilitation. This was distributed by the French Government to the members of both Chambers, as though it had been an official document. In 1864 he published a larger work in two volumes entitled "De l'amélioration de la loi criminelle," of which the twenty-fourth chapter is devoted to the discussion of conditional liberation, which, he says, "is nothing more nor less than the extension to adult convicts of a principle applied with such success to juvenile offenders." He insists that "as a skilful physician gives or withholds remedial treatment according as the patient is or is not cured, so ought the expiatory treatment imposed by law upon the criminal to cease, when his amendment is complete; further detention is inoperative for good, an act of inhumanity, and a needless burden to the state." Society should say to the prisoner: "Whenever you give satisfactory evidence of your genuine reformation, you will be tested, under the operation of a ticket-of-leave; thus the opportunity to abridge the term of your imprisonment is placed in your own hands." This course is, in his opinion, recommended by considerations of the greater deterrent effect of longer sentences by the courts, and of the moral encouragement given to the prisoner by the hope held out to him, as well as of the aid rendered to discipline in the prison; also for economic and sociological reasons. In his second volume he expresses satisfaction with the Irish graded system and the excellent results thereby secured.

to exceed the maximum term named in the New York code for each of the offences of which they might be convicted. He then proceeded to show, in the organization and government of the new Reformatory, what could be done, by the aid of this weapon, in the way of making good citizens out of bad. This is the signal service to humanity rendered by him, which has settled his position in the history of criminal reform, despite any errors of judgment on his part in the details of the application of the system.

The principle of the indeterminate sentence, with majority as its maximum, for juvenile offenders, was already familiar to us all. We were also accustomed to the operation of the commutation or good time laws, by which the actual term of imprisonment is abridged, in conformity to a standing rule in force at the time when sentence is pronounced, as a reward for good conduct while in prison. These were helps to the acceptance, as an experiment, of the indeterminate sentence, so-called, though the true indeterminate sentence has neither minimum nor maximum, and no one has had the courage to propose its adoption, as yet.[1]

The Elmira system, in practice, is a combination of marks, grades, and the parole, under the indeterminate sentence. The division of prisoners into grades, and the

[1] Since the above paragraph was written, my attention has been called to the fact that in New York the maximum limit has been removed. Theoretically, its removal can be justified, and logical consistency probably requires that it should be removed; but prudential and practical arguments can be adduced against pushing a sound principle to this extreme, in advance of its general and decided acceptance by the public at large, on the following grounds: (1) Such action is unnecessary, since, if the maximum is sufficiently high, the

practice of promoting them from one grade to another, were methods prescribed in Massachusetts by law in 1826, and followed in the Massachusetts State Prison for many years. But, so far as appears, promotion was not offset by any corresponding power of degradation, nor was the sentence shortened as a reward for winning one's way into the third or highest class, neither was the classification determined by marks. Whether this was an original Massachusetts idea or borrowed from Australia is uncertain. It apparently did not give satisfaction, for it was ultimately dropped, and is now pretty much forgotten.

Marks are useful, but possibly not essential, as a means of keeping the record upon which a prisoner's promotion or degradation depends. They should of course be given in the three divisions of his daily life, for obedience to rules of order, work done in the shops or elsewhere, and diligence in study. Their number is a question of pure detail, like marking in school: the highest mark may be three or five or ten, it matters little which. So, too, the number of classes may be varied, according to circumstances. The indispensable feature of the progressive classification scheme is that prisoners shall be raised and lowered in the scale on the basis of their merits. There are, however, instances in which the arbitrary remission of punishment by loss of rank is jus-

same purpose is subserved as if there were no maximum; (2) the public and the courts are reluctant to place in the hands of any man or set of men unlimited power to detain a prisoner for life, regardless of the gravity of the offence of which he is guilty, especially if he is a young man and a first offender; (3) there is danger that a reaction may set in, which will encourage the enemies of the system to move for a return to definite sentences.

tified, by the effect upon a discouraged man. The good of each convict and of the body of convicts is the end sought, and anything which tends to secure that is proper.

Conditional liberation or the ticket-of-leave is not to be confounded with the indeterminate sentence. Conditional liberation is the act of the executive, not of the judicial branch of the government. It is the release of a convict, prior to the expiration of sentence, on probation, if, in the judgment of those in the most favorable position for forming a correct opinion, there is good reason to believe that he will henceforth abstain from crime; but he is released with the express understanding that he is still in custody, and that if he disappoints the expectation entertained of him, and relapses into criminal associations or ways, or manifests signs of being about to do so, he can and will be arrested and returned to the prison at any time during the continuance of his ticket-of-leave and before his liability to the criminal law terminates by his absolute discharge. Wherever conditional liberation is practised, except in the United States, this privilege is granted under a definite sentence: this is the case in England, Germany, Switzerland, France, and Holland. The usual custom abroad is to delay the giving of a parole — in Sweden until the convict has served ten years; and it is regarded more as an act of grace, and not so much as a reward, to which the man who has earned it has a title.[1]

[1] The first application of the principle of conditional liberation or "ticket-of-leave" to adults was by the English Government, after the failure of the system of transportation. By the law of 1847 this privilege was granted only to convicts shipped to Australia; but by the Act of 1853 tickets-of-leave were authorized to be granted also to convicts incarcerated on English soil. The system of conditional libera-

It seems more important to define the principles upon which the Elmira system is founded, than to describe in detail the architectural and other structural arrangements and the general management, however interesting that might be.[1] The great underlying thought in that institution is that criminals can be reformed; that reformation is the right of the convict and the duty of the State; that every prisoner must be individualized and given the special treatment adapted to develop him in the point in which he is weak — physical, intellectual, or moral culture, in combination, but in varying proportions, according to the diagnosis of each case; that time must be given for the reformatory process to take effect,

tion (German, *Erlaubs-pass*) was adopted by the Kingdom of Saxony in 1862; and in the same year by the Grand Duchy of Oldenburg; in 1868, by the Canton of Sargovie, in Switzerland; in 1869, by the Kingdom of Servia; in 1871, by the German Empire; in 1873, by the Kingdom of Denmark, also by the Canton of Neuchâtel; in 1875, by the Canton of Vaud, also by the Kingdom of Croatia, in Hungary; in 1878 by the Canton of Unterwalden; in 1881, by the Kingdom of Holland; in 1882, by the Empire of Japan; in 1885, by the French Republic. In none of these countries is it connected, as in the United States, with the indeterminate sentence. In all of them it is hedged about with more or less superfluous legal restrictions, which tend to defeat the end in view in its enactment.

[1] An apology seems to be due to the other American institutions founded upon the Elmira principle and in successful operation, for giving what may seem to be undue prominence to the New York Reformatory at Elmira, as if it were the only one worthy of mention or discussion. This is by no means the author's opinion. The Massachusetts Reformatory, at Concord, in particular, should be carefully studied, since it is strong in some of the very particulars in which the New York Reformatory is weak. But Elmira is the mother institution. Its superintendent, Mr. Brockway, was one of the little group of advanced thinkers upon this question who dared to advise the new departure and to elaborate it in imagination, before their ideas were given concrete form and substance. He has been its creator, and has been continuously in charge of it, from the day it was

before allowing him to be sent away, uncured; that his cure is always facilitated by his co-operation, and often impossible without it; that no other form of rewards and punishments is so effective, in so many instances, as transfer from one class to another, with different privileges in each; but that the supreme agency for gaining the desired co-operation on his part is power lodged in the administration of the prison to lengthen or shorten the duration of his term of incarceration. The other great thought, here insisted upon as nowhere else in the world, is that the whole process of reformation is educational; not meaning by that term the injection of information without assimilation, but the drawing out to its full natural and normal limit of every faculty of the body, mind, and soul of every man who passes through the institution. This is accomplished by all sorts of athletic training; shop work, military drill, gymnastics, Turkish and other baths, massage, and diet; by all sorts of intellectual discipline as well, including not merely class instruction and the hearing of lectures on subjects in which prisoners most need instruction, but also systematic reading under direction, and examination upon the books read;[1] writing for the *Summary*, the prison weekly which circulates instead of the ordinary daily newspaper within the walls; and debate, in the presence

opened until now. It has seemed better to confine the reader's attention to the most striking and original example of the ideal prison than to dissipate his thoughts by dwelling upon possible differences in the spirit and administration of prisons of this class. The application of the Elmira principle to women may be studied in the Massachusetts Prison for Women, at Sherborn, an institution of which all Americans have just reason to be proud.

[1] "It appears to me that we have a right to believe in the alteration of character of a prisoner, who at the beginning of his term of

of a teacher who guides and moderates the discussion. Trade instruction is made prominent. The aim of the institution is to send no man out, who is not prepared to do something well enough to be independent of the temptation to fraud or theft.

If the question is asked, Where does the punishment come in? the answer is: In the discipline, which is unremitting and exacting; in the violence done to the criminal tastes and habits of the prisoners, which they have no opportunity to indulge; in the consciousness that one is held in a net of influence and restraint, which one is powerless to break; in the uncertainty as to one's ability to earn a discharge in time, or without too great a personal sacrifice; in the regularity and monotony of life under a rigid rule. Certain it is, that the worst men prefer to be sent to a prison organized on the old plan, and that there have been moments, when the strain of anxiety to win an early parole has been so ominous of possible mental derangement as to alarm the superintendent and compel him to relax the pressure upon certain sensitive spirits thought to be in danger of eclipse. For the generation of the moral force necessary to carry the mass of prisoners upward and onward in a great reformatory current, association (under necessary restrictions) is indispensable, which is the reply to the criticisms upon this system by the advocates of the Pennsylvania system. Nor is there any

incarceration, took pleasure only in reading of a frivolous sort, but, after having attended school for several months, draws from the library none but scientific or other serious works, and assimilates their contents, as the teacher knows, from his answers to the questions put once a month to all prisoners concerning their reading." — DR. GUILLAUME *of Switzerland.*

point in the observation that association and routine are inseparable, and that individual treatment is impossible without cellular separation by day and night. If that were true, it would be necessary to have a separate class-room for every child in school, and to build our churches with separate stalls, as chapels are constructed in some foreign prisons.[1]

The Elmira system has been adopted in whole or in part, and made applicable to all or a part of the prisoners, in several other states: in Massachusetts, Pennsylvania, Ohio, Michigan, Illinois, Minnesota, Kansas, and South Dakota. One advantage gained from it is that it compels the study of the criminal himself, from all points of view; also the study of the causes and conditions which have made him what he is.

Above all other systems, however, it demands direction by a man of the highest integrity, attainments, and consecration. It has dangers peculiar to itself. The least of these, perhaps, is the liability to bribery and corruption of the warden, if he has the power of release, to secure the earlier discharge of convicts not entitled to consideration on account of their records. It is far more probable that, as the result of our widespread acceptance of the doctrine that office is the reward of partisan service, and that parties can only be held together by the hope of plunder, the position of superintendent of a reformatory prison (and all prisons should be re-

[1] For a full and detailed account of the administration of the system at Elmira, the reader is referred to "The New York State Reformatory in Elmira," by Alexander Winter, F. S. S., (London, 1891), or to the more recent "Year Books" of the institution itself. The latter are finely and profusely illustrated.

formatories) will be given to an incompetent man, in payment of a political debt. The art of practical politics has been well defined as "the art of paying your debts at somebody's else expense." On this subject the author may be excused for quoting from himself: —

"If a warden is given his place as a reward for party service, he is in so far disqualified for the highest success, by the very tastes and aptitudes which fit him to be a party leader. But whatever may be his fitness for the position, it is certain that, under a political administration of prisons, he will be turned out, whenever the control of the government passes into the hands of the opposite party, or even of a different faction of his own party. He has therefore little inducement to master the business entrusted to him. Worse than that, the subordinate positions in his gift are regarded as counters in the game; and unless he has himself the sense and skill to play them for all that they are worth, these minor appointments will be dictated to him, and he will be forced to put up with incompetency, if not with disloyalty. There can be no prison reform in the United States, until the divorce of the prison system from practical politics is pronounced with such authority as to prevent any subsequent reunion of the two."

What constitutes competency depends upon what is expected of a public officer. If nothing more than that prisoners shall not escape, a soldier or a policeman will answer. If a pecuniary profit from convict labor is demanded, the warden must be a good business man. If he is to make the prison a factor in caucus and convention politics, he must be a "fine worker." In any event, he must be a judge of human nature, and capable of handling men. Honest he must be, of course, and kind, for if not kind, he is apt to be lacking in personal bravery. But if he is to be the centre and mainspring of educational and reformatory influence, he must be unsur-

passed as a teacher and as an example of purity. The work of uplifting the degraded is one which calls for the highest qualities of soul and of brain. It is a work which it would not have shamed Phillips Brooks to have undertaken, at Charlestown or Concord; and, until we have the best men in this position, we cannot look for the best results. Where the personal fate of a thousand or fifteen hundred men depends upon the application to duty, the insight, the moral honesty, of another man clothed with almost despotic power, it will not answer to give that power into the possession of one who does not understand his responsibilities or who is unequal to them. But, if he possesses the requisite characteristics, no imaginable force will add so much to his power for good, as the right to fix the date of graduation of his pupils.

CHAPTER XI.

CRIMINAL ANTHROPOLOGY.

THE scientific study of the physical and psychical peculiarities of criminals is a new branch of anthropological investigation, to which the name of criminal anthropology has been given. Crime is admitted to be an ethical, social, legal fact: is it or is it not also a biological fact? Naturally, biologists are disposed so to regard it, and they look with envy and disgust upon the mass of clinical material for biological and anthropological research which is allowed to go to waste, from the lack of scientific curiosity, in prisons. The conclusion to which such study points, in the estimation of men whose opinions are not to be dismissed without due consideration, is, in the words of Benedikt, that "The brains of criminals exhibit a deviation from the normal type, and criminals are to be viewed as an anthropological variety of their species, at least among the cultured races."

There is always danger in speaking of groups or classes of men, without reservations, such as that a particular observation is meant to apply not to all individuals of the group, but to the majority; or that it is intended as a generalization expressive of an average condition and tendency; or that it is true of all members of the group who fall within certain defined limits, and that the exceptions are outside those limits.

Precisely what constitutes an "anthropological variety" is not quite clear. But certainly it is a group of which the physical, mental, and moral composite, if we could arrive at it, would differ from the corresponding composite which should include all mankind, or all of a given race, or all the members of all other groups exclusive of the one under observation; and it might be assumed that it would also differ from the composite of any other group that can be named. Probably, too, if our knowledge of its history were minute and extensive, it would appear that it had been generated, under the pressure of a special environment, by inheritance; and we might even be warranted in predicting for it that it would continue to exist and grow, as a distinct aggregation of individuals more or less remotely connected with each other by blood, on account of marital unions between its members and the resulting intensification of the hereditary criminal strain. The result of this process of evolution of a separate class in the community would be that, upon the whole, the individuals included in it would bear a certain family resemblance to each other, manifesting itself in the absence or defect of certain physical and psychical traits common to other men, and in the corresponding overgrowth of other organs, functions, or habits.

The question to be answered, therefore, is whether men who have been convicted of crime and sentenced to imprisonment constitute such a group; whether the percentage of known criminal peculiarities of any sort can be ascertained and compared with the corresponding percentage for men not convicted and sentenced; and whether the differences which can be demonstrated by a

sufficient number of observations pointing to a common conclusion are due to heredity or environment, or to both, and, if to both, in what relative proportion.

A multitude of medical and other scientific men, with greater or less aptitude for this sort of inquiry, have had their attention directed to this question and are seeking for its solution.

It needs no apparatus for minute and accurate measurements, with rules, scales, callipers, and goniometers — no chemical analysis of blood, tissues, and excretions — no careful experiments to test the degree of nervous susceptibility of different sensory organs — no specially devised psychical tests — to enable a common man, familiar with criminals, through his relation to them as an officer of the police or of a court or prison, to describe their most obvious and striking characteristics. As a woman masquerading in male attire can be readily detected by a trained eye, so a thief can be known often by his looks and motions. A "furtive" look (furtive from *fur*, Latin for thief) is the look of a thief. But so can most mechanics, and even professional men. The demand made by every avocation in life upon its votaries for specific exertions on the one hand and sacrifices on the other, never fails to leave its impress upon the figure, the attitude, the entire bearing of the man, and to affect even his dress and gestures. This is not saying, however, that bankers or clergymen or editors or hotel clerks constitute distinct types, or that by anthropological study each of these groups of men engaged in similar pursuits could be shown to constitute a type, that is, "an *ensemble* of distinctive characters" tending to perpetuate itself by sexual selection.

The criminal anthropologists dissect the criminal, so to speak, while he is still alive; measure every anatomical dimension of skull and trunk and limbs, record the color of his hair and his eyes, take his temperature, test his vitality with the stethoscope and sphygmograph, count his inspirations and expirations, search everywhere for evidence of abnormality of structure or of physiological action — for the pathological; and they extend this search to the internal organs, if the desired opportunity offers itself for an autopsy. It is a tedious process, if thorough, involving as it does, the examination of a multitude of individuals, and the comparison not of isolated phenomena, but of aggregated groups of phenomena.

What have they found? A general answer to this question is all that can properly be given in a work not medical but designed for lay reading, avoiding as far as possible technical terms and omitting observations which are incomprehensible without a minute acquaintance with the anatomy of the human body, particularly of the brain and nervous system.

Among the anatomical peculiarities noticed by students like Lombroso, Ferri, Benedikt, and many others who might be named, are the shape of the skull, including cranial asymmetry, microcephalism and macrocephalism. A very frequent defect is insufficient cranial development, markedly in the anterior portion. A receding forehead is common. Criminals are said to have a disproportionate tendency to the sugar-loaf or pointed head. Lombroso makes much of the unusual depth of the median occipital fossa. This is observable in the skull of Charlotte Corday, belonging to the collection of Prince Roland Bonaparte, which was exhibited at the

Second International Congress of Criminal Anthropology at Paris, in 1889, and gave rise to a somewhat heated discussion of the question whether she was in fact a criminal or a patriot.[1] The same authority calls attention to the exaggeration of the orbital arches and frontal sinuses. Thieves are said, by one criminologist, to have small heads, while murderers have large heads; the sufficiency of his data for so daring a generalization is questionable. Beneath the skull, Benedikt claims to have discovered an unusual confluence of the fissures of the brain, and additional convolutions in the frontal lobe. The shape of the skull affects the countenance, in which have been observed certain deformities of the nose and ear, peculiarities in the coloring of the eye, irregularities of the teeth, prominence of the cheek bones, elongation of the lower jaw, and the like. Another bold generalization is that which declares that the long and square jaw is common among criminals guilty of crimes of violence, but a receding chin among petty offenders; this is bold, however, only in the sense that it probably rests upon an inadequate statistical founda-

[1] "Lombroso said that the skull of Charlotte Corday demonstrated anatomic characters of the criminal born, such as platycephalic, the occipital fossette, and other characters of the virile skull. Dr. Topinard responded by affirming that the skull of Charlotte Corday was normal, and that it presents all the proper characters of the skull of a woman. The platycephalic was a normal character, and the vermicular fossette was not an anomaly, and there was nothing irregular in the skull, unless it should be its platycephalic: and he said it was rare that a skull was the same in all its parts, and on both its sides. Benedikt said that according to his belief one had as much right to say that the occipital fossette was an indication of predisposition to hemorrhoids as to crime. Ferri and Lombroso replied vigorously to Benedikt, while Senator Moleschott came to his aid." — Dr. Wilson's Report to the Smithsonian Institution.

tion; otherwise, it is merely the application to convicts of a hackneyed physiognomical remark. The prominence of the criminal ear has been especially noted. Prisoners are said to have wrinkled faces; male prisoners have often scanty beards; many hairy women are found in prison. Red-haired men and women do not seem to be given to the commission of crime. Similar remarks might be quoted relative to the skeleton, such as that convicts have long arms, pigeon-breasts, and stooping shoulders.

Some of the physiological peculiarities noted are disordered nervous action, insensibility to pain, quick and easy recovery from wounds, defective taste and smell, strength and restlessness of the eye, mobility of the face and hands, left-handedness, excessive temperature, perverted secretions, abnormal sexual appetites, precocity, and so forth. Some medical writers say that the hearing of criminals is defective, others that it is preternaturally acute. Some affirm that color-blindness is prevalent among them, but others that it is rare. They are usually sensitive to climatic and meteorological influences. A very common observation is their freedom from the habit of blushing, but this may be a psychological rather than a physiological phenomenon.

Intellectually and morally, criminals are for the most part weak. Their mental feebleness is sometimes so marked as to produce the impression of partial imbecility. (With the criminal class we must include prostitutes, for prostitution in women is almost the equivalent of crime in men). This weakness shows itself in inattention, lack of imagination or the power of representation, defective memory, lack of foresight, and general

aversion to mental exertion. The criminal is often unable to picture to himself the probable consequences of a criminal action; he does not know how to guard himself against detection. As a child, the chances largely preponderate that he was a truant or a dull pupil, inclined to mischief and disobedience. Stupidity, suspicion, and cunning naturally go together. In his emotions he is stolid or volatile, never well-balanced. Among female convicts nervous explosions or "tantrums" are an ordinary occurrence. Emotional instability is a common characteristic of prisoners; they are easily made to weep or laugh, but feeling with them lasts not long enough to be translated into action; they can not form a resolve and stick to it, whether for good or for evil. They crave constant stimulation and excitement. The curse of Reuben is upon them: "Unstable as water, thou shalt not excel." To this, no doubt, in combination with other causes, may be traced their general tendency to vagabondage. Their sentiments are often fictitious and artificial. Their attempts at art, in literature, drawing, and modelling are for the most part grotesquely crude, rarely or never worthy of serious approval. They are like the insane, in respect of their immense egoism;[1] this lies at the root of their insensi-

[1] "In the degenerate, either (1) vital internal facts are morbidly intensified, or proceed abnormally, and are therefore constantly perceived by consciousness; or (2) the sensory nerves are obtuse, and the perceptional centres weak and sluggish; or (3) perhaps these two deviations from the norm coexist. The result in all these cases is that the 'Ego' is far more strongly represented in consciousness than the image of the external world. The ego-maniac, consequently, neither knows nor grasps the phenomenon of the universe. The effect of this is a want of interest and sympathy, and an incapacity to adapt himself to nature and humanity. The ab-

bility to the suffering which they inflict, and it is one reason of their indifference to advice and reproof. It sometimes shows itself in ridiculous displays of vanity.

Moral considerations have very little weight with criminals, as a class, because they do not appreciate them. Law is a notion which they do not comprehend very clearly, either human or divine; it has no basis, in their conception of it, but is something purely arbitrary, to be resisted and violated, if they choose. They seem to be deficient in conscience, congenitally so in some cases; or their conscience is perverted and acts in an inverse sense. They are treacherous and readily inform upon each other; prison officials sometimes employ them as spies, and information of a contemplated revolt is almost invariably given to the warden in advance of the attempt, often by the very prisoner who planned it. Lying is congenial to them; to have deceived somebody, especially a superior officer, is a joke and a victory. Dr. Wey thinks that the basis of all criminality is the ineradicable tendency to lie. Dr. A. Krause thinks that it consists in the love of pleasure, combined with aversion to work. This remark suggests

sence of feeling, and the incapacity of adaptation, frequently accompanied by perversion of the instincts and impulses, make the ego-maniac an anti-social being. He is a moral lunatic, a criminal, a pessimist, an anarchist, a misanthrope; and he is all these, either in his thoughts and his feelings, or also in his actions. The struggle against the anti-social ego-maniac, his expulsion from the social body, are necessary functions of the latter; and if it is not capable of accomplishing it, it is a sign of waning vital power or serious ailment. Toleration, and above all, admiration of the ego-maniac, be he one in theory or in practice, is, so to speak, a proof that the kidneys of the social organism do not accomplish their task, that society suffers from Bright's disease." — "Degeneration," by Max Nordau.

the double moral weakness of these culpable unfortunates — active and passive inertia; inability to will affirmatively or negatively, so that to do good and to resist temptation are alike impossible; often, no doubt, the thought of it does not enter their mind, and, if it does, it is soon displaced by the force of their animal appetites. They are apt to be intemperate or licentious or both. All their tastes are low. The animal in them preponderates. They are often apparently incapable of remorse or even of penitential regret; they rarely manifest the sense of shame.

Such religious instincts as they have and cherish are frequently pure superstition, like that of the famous Italian bandit, Gasparoni, who prided himself that he had never committed a murder on Friday. There are four prevalent types of piety in the world: the theological, the sacramentarian or ritual, the emotional, and the humanitarian. In a devout but well-balanced mind these are combined in something like an average proportion. But such piety as prisoners may manifest in their life or conversation is apt to be preponderatingly ritual or emotional. Theology is for the most part intellectually incomprehensible by them, and humanitarianism is diametrically opposed to their fundamental moral instincts. The ethical function of religion is to strengthen the power of self-control, to afford a sufficient motive to self-denial and self-restraint, and to inspire self-sacrifice for the sake of others. This it does by precept, example, warnings and promises. It teaches subjection to the power which controls all nature, harmony with the divine will, obedience as the supreme law of life. These are notions alien to the criminal mind.

Certain criminal habits should here be alluded to, of which one is tattooing.[1] This practice, forbidden in the Mosaic law (Lev. xix., 28), is common among savages, sailors, and soldiers. The desired ornamentation or marking is secured by pricking, cutting, or burning. The most ordinary colors are in India ink, charcoal, and indigo. The design may be on any portion of the body, but is usually on the arms or breast, and is pictorial, emblematic, or may consist in a name, initials, or a motto. Some tattooing, among savages, is really armorial — a method of proving family descent. Other motives to indulgence in this barbarous usage, aside from meaningless imitation, are the gratification of sentiment (friendly, hostile, erotic, or religious) and the desire for identification in case of death at sea or upon the field of battle. It might naturally be supposed that criminals would be averse to it for the converse of the last-named reason. Probably the great majority of prisoners who show tattoo marks had them inscribed, while

[1] "Tattooing is that strange and very ancient custom which consists in the introduction, under the cutaneous epidermis, at different depths, of coloring matter, in order to produce some design which will be of very long duration, though it is not absolutely indelible." — "Histoire médicale du tatouage," by Ernest Berchon, M. D., Paris, 1869.

"Although the practice of the art is so ancient that we have evidence of its existence in prehistoric times, and that the earliest chronicles of our race contain many references to it, yet the term itself is comparatively modern. It is derived from a Polynesian word, *tattau*, pronounced *tattahou*. Captain Cook, who first introduced the term, printed it *tattow*, making a dissyllable of it, and this erroneous pronunciation has followed the word into nearly every modern language." — "Tattooing Among Civilized People," by Robert Fletcher, M. D.; an address before the Anthropological Society of Washington, D.C., Dec. 19, 1882.

following some honest avocation, prior to their lapse into crime, arrest, and conviction. Dr. Robert Fletcher says:

"The propensity of criminals to tattoo sentences of a lugubrious or self-condemnatory character upon their bodies is very remarkable, and furnishes a curious psychological study. A Venetian convict bore upon his breast these words: *Misero me, come dovrò finire!* — 'Wretch that I am, how shall I end?' Fieschi, before his attempted regicide, had been condemned for forgery, and deprived of his cross of the Legion of Honor. While in prison, he tattooed the cross upon his breast, with an inscription implying that this one could not be taken from him. Lacassagne three times found the following sentence: 'The past has deceived me, the present torments me, the future horrifies me.' Other inscriptions of this character are: 'The child of misfortune,' 'No luck,' 'No chance,' 'The child of misery, born under an evil star,' 'The galleys await me.' Lombroso gives the representation of a Piedmontese who had been a sailor, a robber, and finally a murderer for vendetta. On his right breast was the inscription, *Giuro di vendicarmi* — 'I swear to be avenged' — with two daggers crossed above and two banners also crossed beneath. A serpent was on the shoulder with its head regarding the inscription. A redoubtable convict, Massalene, a man of herculean strength and size, was covered with inscriptions and designs. On his chest was a guillotine in black and red, with this legend beneath it in red letters: 'I began ill, I shall end ill. It is the fate which awaits me.'"

A more exact, if more prosaic, notion of tattooing in general may be gained by an examination of the annual "Register of Habitual Criminals in England and Wales," which contains a column entitled "distinctive marks," in which tattoo marks are set down with considerable fulness and precision. The Register for 1876, which chances to be at hand at the moment, contains the names of 2,875 criminals, of whom 600 are tattooed: more than 40 of them are women. The most common method of

marking is by initials; this is noticed in 250, while 34 wear names, 7 dates, 6 numbers, and one a place. The initials and names are frequently those of the person so marked, sometimes of sweethearts, or possibly, in the case of sailors, of ships. There are, in addition, 44 who are marked with a D, 7 with DD, and 2 with DDD, on the left side; 12 are marked with BC on the right side. These seem to denote membership in some society; one prisoner shows both a D and BC, as if he were doubly connected. In several instances an ineffectual attempt has been made to obliterate the D, once by a flower-pot, once by a teapot, and once by a castle; obliteration can in most cases be effected only by additions to the original design. The most common pictorial emblem is the anchor, which adorns 182 convicts, while other less popular nautical ornaments are: 13 ships, 2 boats, a capstan, a wheel, and a compass, also an angel blowing a trumpet, which may be a ship's figure-head. (These numbers do not indicate the number of objects drawn upon the skin, but the number of bodies upon which they appear — the same person may gratify his special taste by having two or more similar designs upon different parts of the body). Military life seems to suggest fewer subjects than life at sea; there are 9 with guns, one with a pistol, 10 with swords, (6 of which are swords crossed), one with a drum, 2 with cannons, and 2 with piled cannon-balls. The patriotic feeling shows itself in 49 crossed flags, 31 single flags, 6 banners, 5 sets of colors (of which one is American), 2 Union jacks, 10 coats-of-arms (of which 2 are American), and 2 V R's. The human figure is a favorite subject. The number who have had male figures tattooed upon themselves is

65, of which 33 are pictures of sailors, 5 soldiers, 2 Highlanders, and one a pugilist. Female figures, 48: of which some are clothed and some nude: 2 of them represent Hope leaning upon an anchor, one a Japanese girl, one a queen with a sceptre. Upon a number of men there are tattooed a man and a woman standing together; some of these are entitled "Adam and Eve." Add 2 children and 12 mermaids; also 5 figures not described, 5 female busts, 12 heads, an arm, and a hand and heart. There are 49 with hearts, of which 6 are pierced by arrows; 6 darts or arrows (one arrows crossed), and 3 shields; 3 circles and 4 diamonds; 15 wreaths; one wreath of serpents. Among the animals chosen are 10 birds, 4 eagles, a cock, 10 fishes, 2 dolphins, a horse, a horse with his jockey, a horse's head, a dog, 3 hares, (one of which is pursued by a greyhound), a deer, an elephant, a kangaroo, a monkey, and 3 serpents. There are 46 floral and horticultural emblems, including 11 flower-pots, 15 trees, 2 roses, 2 thistles, a rose, shamrock and thistle, grapes, and leaves. The tree sometimes is a yew or willow, sometimes it represents the tree of knowledge. There are 45 stars, 3 suns, 2 moons, 4 half-moons, and one crescent; 14 crowns and one coronet; 38 crosses and 27 crucifixes. Convivial good fellowship has suggested 2 barrels of rum, a jug, a bottle, 2 wine-glasses, a cup, and 4 pipes. Several miscellaneous and less characteristic devices are here omitted. Many tattoo marks have no significance, but are described as marks, dots, spots, lines, bracelets, or rings, which are found on nearly or quite half the entire number of prisoners listed. The mottoes deserve mention: "Faith," "Hope," "Love," "My love," "Jesus wept," "Jesus

our Lord is crucified," "*Dieu et mon droit*," "May he rest in peace," "Now or never," "Pay," and beneath the figure of a soldier by a tomb is the inscription, "In memory of my parents."[1]

[1] To show the precise character of the combinations of devices upon individuals, a few of the more elaborate and striking may profitably be given by way of illustration, as follows:—

A—— J——. "Crown, crossed flags, 28 J 2 X, half bracelet, Jesus our Lord is crucified, and J.E.E. from A.N., on left arm; 14 Jane James, 2, 18 X T, wreath, and several dots, on left hand; rings on all the fingers and the thumb of the left hand; 4 X, and half-bracelet, on right forearm; A and 2 dots on right hand; ring on second right finger."

T—— S——. "Great number of dots, three crosses, 1864, C.C.W., dots, Hi Jc X tes X, XX⁚·⁚ XV, etc., on left arm; 39 blue dots, 1861, and other marks, on back of left hand; C.V.V. on left shin."

W—— D——. "Anchor and heart on right arm; cross, female, man and flag, thistle, and two flags, on left arm; bracelet on left wrist; heart, spade, and six blue dots, on back of left hand; anchor, cross, and two rings, on fingers of left hand; flower-pot covering D on left breast; female on left thigh; sailor, J.D., and flower-pot on left calf; cross flags on right leg."

R—— D——. "D on left side; M.B.P., 1870, anchor, cross flags in wreath, X-Rd, and bracelet, on left arm; X, anchor, and crown, on left hand; rings on three of the left fingers; anchor, heart, cross flags in wreath, star, diamond, female, anchor, and bracelet, on right arm."

A—— F——. "Tattooed left arm; female above elbow, deer surrounded by snakes (entwined), flag, monkey, cross, cock, Rebecca, heart, anchor, man and woman, several indistinct marks, and indistinct letters, on right arm."

D—— H——. "Man and woman between breasts; sailor, ship, cross flags, and crown, above right elbow; naked woman, sailor under a flag, and eagle, on right forearm; sailor, and Highlander, woman with her dress up, heart, and cross flags, on left arm; D on left side; tree and pot on right buttock."

R—— H——. "A.S., tomahawk, bracelet, mermaid, crucifix, and girl with a flag, on right hand and arm; rings on second and third fingers of right hand; seven stars, half-moon, anchor, and P., on back of left hand; bracelet, G.R., sailor and girl with a flag (R.H. beneath them), and English coat-of-arms, on left arm; ship on breast."

W—— L——. "Crucifix, sun, moon, Highlander, woman, wreath, sailor, W.L., and bracelet, on right arm; tree, Adam and Eve, mermaid, wreath, and bracelet, on left arm; ship on breast; DD on left side."

W—— T——. "Ship on right breast; sailor and woman on left breast; mermaid, half moon, seven stars, S.S., heart, two darts, crown, anchor, two hearts pierced with darts, and half-bracelet, on left arm; several faint blue marks on back of left hand; rings on first, second, and third fingers of left hand."

It is well known that thieves have a language of their own, or several languages, which are as unintelligible to the uninitiated as the pigeon English of the far East. This is called in French *argot*, and has been eloquently descanted upon by two of the greatest of the French authors, Balzac and Victor Hugo. Hugo calls it "the idiom of corruption," "the language of the dark," the "wardrobe in which language, having a foul deed in contemplation, disguises itself," a "hideous murmur, more like a howl than speech." It "puts on word-masks and metaphoric rags." Yet he declares it to be a true language: "a languge within a language," with a syntax and even a poetry of its own, whose roots are partly historical and partly philological. It is a conglomerate of fragments borrowed from all languages, changed in form, as bowlders are rounded by the action of a glacier, but concealing within it the remembrance of all the sin and sorrow of its embittered inventors, who have built it up bit by bit, as the coral reefs have been built by the infusoria from the salt sea. Its intricacies furnish a clew to the operations of the criminal mind. In French argot, the devil is called the baker. A prison cell is the *castus*, or place of enforced abstinence; a saw is a fandango, because when the feet are free from fetters one can dance. The boys at the Elmira Reformatory have named that institution "the college;" Victor Hugo says that this is common thieves' slang, and

M—— C——. (Female convict) "T.J.J.W.M.S.J.A.A., and ship, on right arm; W.S.C.W.W.M.A.B.C.M., on left arm; man and anchor on left hand."

The foregoing examples serve to emphasize both the idle habits and the insensibility to pain which characterize so many members of the criminal class.

adds that from this word a complete penitentiary system might be evolved.

Balzac claims that the slang of thieves has enriched the language of France; that its bizarre imagery has delighted kings and its unique vocabulary passed the lips of women *à la mode.* Even literary men of the rank of Voltaire have adopted certain of its expressions and made them current in the literature of the world.[1]

Some specimens of English thieves' slang have been given by Mr. Michael Davitt, which have been widely

[1] One who wishes to read a masterly discussion of *argot*, should turn to Balzac's "La dernière incarnation de Vautrin," (Lévy, Paris) pp. 35, *seq.* It should be read, preferably, in the original, since much of it can be but imperfectly rendered in English. The use of argot is profusely illustrated in the conversation of the *Grands Fanandels.* Balzac, the prince of realists, may perhaps be described with truth as the closest and most philosophical observer of life and manners of a low type, at least morally, who has ever expressed his convictions in the form of the sociological novel. He has been said to be superficial. Art is not anatomical; yet it must be admitted, even by his admirers, that his art is somewhat marred by the minuteness of his analytical descriptions. No writer of any nation has revealed a more extensive and sympathetic acquaintance with human nature, except Shakspeare — but these two cannot be compared; on his own ground, Balzac is supreme. He has not, however, the Anglo-Saxon ideal of true nobility of character. In Vautrin he has given the world a marvellous and terrible impersonation. In himself and in his relations to his associates and victims, Vautrin is the incarnation of the idea of Crime, as it would like to be, but can not, for want of the requisite intellectual capacity. The only field in which Crime, as Balzac conceives it, can successfully operate on a large scale, is that of politics and finance. By a stroke of genius, Vautrin, beaten by the police, is made to enter the secret service, and, from the steps of the throne of criminal justice, to continue to dominate the lower world in which he had so long reigned — thus proving that fate is stronger than fortune, and that, while fortune may favor fools, fate is on the side of genuine talent.

copied, and may not be new to the reader, of which the following is an example: —

"I was jogging down a blooming slum in the Chapel, when I butted a reeler who was sporting a red slang. I broke off his jerry, and boned the clock, which was a red one, but I was sported by a copper who claimed me. I was lugged before the beak, who gave me six doss in the Steel. The week after I was chucked up, I did a snatch near St. Paul's, was collared, lagged, and got this bit of seven stretch."

This was a pickpocket's account of his arrest, and translated into every-day English means: —

"As I was walking down a narrow alley in Whitechapel, I ran up against a drunken man, who had a gold watchguard. I stole his watch, which was of gold, but was seen by a policeman, who caught me and took me before a magistrate, who gave me six months in the Middlesex house of detention (Bastille). The week after my discharge, I attempted to steal a watch near Saint Paul's, was arrested, convicted, and sentenced to penal servitude for seven years."

Thieves' Latin is also described by the same writer: The first letter of each syllable is dropped and added at the end of the syllable, but at the end of the word a vowel or liquid consonant follows, further to disguise the sound and prevent its recognition by an unaccustomed ear. The sentence, "The bloke's clock is white" (*Anglicè*, the fellow's watch is of silver) would be turned into "The okleblo's wack's clite." "Dog the copper" (see that policeman) would be "Ogda the opperca."

The special interest of anthropological study of criminals grows out of the belief that by its aid light may be thrown upon the perplexing problem of the genesis of crime. Every man is the product of two factors,

namely, his heredity and his environment. The biological school of criminologists lays stress upon the first of these factors, but the sociological school upon the second. A third school — the biologico-sociological — seeks to harmonize the opposing views of the parties to this controversy, by assigning to each of the two factors its precise contributory value. Thus M. Lacassagne said, at Rome, in 1885, that the criminal may be compared to a microbe and his surroundings to the bouillon in which microbes are cultivated. The metaphor is biological, and its employment by M. Lacassagne measurably differentiates him (notwithstanding his affirmation that "society has no more criminals than it deserves") from the sociologists pure and simple, whose formula is, "Society prepares the crimes which criminals commit."

The biologists arrange themselves in two distinct groups, according as they lay greater or less stress upon hereditary influence in the production of the crime class. Atavism is a phenomenon of pure inheritance. It consists in the reappearance, after one or more intervening generations, of characters derived from some ancestor more remote than father or mother. Degeneration, on the other hand, may be the result of causes operating in the present rather than in the past, and is often due as much, if not more, to environment as to heredity. The former resembles a line turned back upon itself, the latter a line bent downward at an angle. We may also conceive of a line which terminates abruptly. These three lines correspond to the three conditions to which crime is somewhat analogous — the states of atavism, degeneration, and pure savagery or arrested development. Crime is always imbecility; it is as impossible

to respect it intellectually as to approve it morally. But with which of these three does it, biologically regarded, most closely correspond? A pronounced evolutionist would probably say, if thinking of the evolution of the race, with savagery; but, if thinking of the evolution of the individual, with atavism; while, if his thoughts were less taken up with the evolutionary theory, or if he were not an evolutionist, he might be rather disposed to regard the existence of crime as pathological in its origin. According to this analysis, the criminal anthropologists may be classed in three groups, instead of two. There are still finer shades of difference among them, as they incline to a physiological or psychical conception of criminal activity; and as they see in criminal degeneracy a general pathological condition or more specifically a neurosis or neurasthenia. These distinctions, are, however, too technical for our present purpose.

A reaction has begun, in the minds of many thoughtful men, against the extreme tendency of some students of sociology to take a purely biological view of humanity as an organism, or, if not in the exact sense of the word an organism, at least an entity whose associated life is organic. The more carefully the conception is examined, the less satisfactory does it appear as an explanation of the communal life of mankind. The human body and the body politic are not built upon the same pattern. The community as a whole needs to be studied directly, in the light of history, political economy, and law. Such direct study is less misleading and more truly fruitful than the endeavor to interpret the organic structure and functional activity of human society by

the aid of analogies, more or less fanciful and never accurate, drawn from a science whose proper scope does not include the subject under investigation.

The sociologists, therefore, as has been intimated, turn away from these biological speculations, to consider the criminal as an individual, in his relations to the community of which he is a part. They, too, however, especially if they are monists and materialists, look upon the criminal as the inevitable product of causes which are irresistible in their operation. They find these causes in social conditions. Every man is a drop in a stream, fed by many fountains, descending from the past into the present. The rivulet is the line of his descent from his progenitors; it mingles with the ocean of his contemporaries. Are the composition and color of this drop affected chiefly by the complexion of the companion drops which it has left behind it in its onward course, or by that of the drops with which it blends to-day? The sociologists believe that the amount and character of crime in every community depend more upon its aggregate political, economical, and industrial condition than upon any hereditary taint in the blood of individuals. They define the criminal as the visible sign of the inadequacy of existing institutions, a reproach to the nation and the age in which he appears. His sin is our sin, of which we are called to repent, and for which we must make reparation and atonement, as truly as he, since we are possibly even more responsible for him than he is for himself.

Evidently these various explanations of the origin of crime must and do affect the opinion of the criminal entertained by those who respectively advance them.

There is much truth in all of them. Each of them can be justified to a greater or less degree by an appeal to the facts in its favor. It is impossible to invent any definition of crime, which covers all crime, other than that given in the opening chapter — "Crime is the violation of the law." The criminal is a lawbreaker. But of what law? — physical, moral, or statutory? Each of the three learned professions is the champion of law, in one of its three forms, the law of God, the law of man, or the law of nature. The disposition of the scientist to reduce all law to a single term is possibly as exaggerated as that of the theologian, but they choose opposite extremes. We must, however, discriminate between crimes and between criminals. Classification is, here as elsewhere, a necessity. The classification of criminals, like that of lunatics, may proceed upon different principles; competing systems of classification have specific values of their own, and they are not mutually contradictory, though the categories named under each system should properly be mutually exclusive. The two principal systems are the etiological, which groups criminals in accordance with the estimate formed of the extent to which particular causes have operated upon them to induce the commission of crime; and the symptomatic, which preferably takes notice of the actual manifestations of the criminal disposition — anatomical, physiological, and psychical. The connection between cause and effect is so close, that either method should give substantially the same result. The hereditarians naturally divide all criminals into two great groups: those in whom the criminal instinct is derived from one's ancestors, near or remote, and is

therefore congenital; and those in whom it is not so derived. The latter are accidental criminals or "criminals of occasion." Some criminologists, perceiving more clearly the sociological element in the genesis of crime, subdivide the second group again into two: those in whom the criminal impulse is self-generated, proceeding from within; and those in whom it is developed by external circumstances and temptation. This subdivision corresponds to the two tests of criminal insanity held by different authorities in criminal jurisprudence, of which the older is the answer to the inquiry, "Is the culprit capable of distinguishing between right and wrong?" but the more recent and apparently more scientific, is the reply given by medical experts to the question, "Had he power at the time to resist the impulse to commit the criminal act with which he is charged?"[1] Motion in any direction is governed by the

[1] "The great poet of the Symbolists, their most admired model, from whom, according to their unanimous testimony, they have received the strongest inspiration, is Paul Verlaine. In this man we find, in astonishing completeness, all the physical and mental marks of degeneration. Verlaine's life is enveloped in mystery, but it is known, from his own avowals, that he passed two years in prison. In the poem "Écrit," in 1875, he narrates in detail, not only without shame, but with gay unconcern, nay, even with boasting, that he was a true professional criminal: —

'J'ai naguère habité le meilleur des châteaux
Dans le plus fin pays d'eau vive et de couteaux;
Quatre tours s'élevaient sur le front d'autant d'ailes,
Et j'ai longtemps, longtemps habité l'une d'elles . . .
Une chambre bien close, une table, une chaise,
Un lit strict où l'on pût dormir juste à son aise, . . .
Tel fut mon lot durant les longs mois là passés . . .
. . . J'étais heureux avec ma vie,
Reconnaisant de biens que nul, certes, n'envie.'

"It is now known that a crime of a peculiarly revolting character led to his punishment, and this is not surprising. Moral insanity,

amount of the mathematical remainder obtained by deducting from the forces which impel a movable body in a certain direction the forces which antagonize such movement: the amount of this remainder, in the case of a criminal, is measured, first, by the strength of his inward impulse or external temptation, and, second, by the degree of the resistance suggested by conscience, intelligence, and enlightened self-interest. In crimes of passion, or crimes against the person, the propelling force is great, sometimes explosive; but in crimes against property, the restraining or antagonistic force is

however, is not present in Verlaine. He sins through irresistible impulse. He is an Impulsivist. The difference between these two forms of degeneration lies in the fact that the morally insane does not look upon his crimes as bad, but commits them with the same unconcern as a sane man would perform any ordinary or virtuous act, and after his misdeed is quite contented with himself; whereas the Impulsivist retains a full consciousness of the baseness of his actions, hopelessly fights against his impulse until he can no longer resist it, and after the performance suffers the most terrible remorse and despair; shortly, but not immediately after, the immediate result being a sense of great relief and satisfaction." — "Degeneration," by Max Nordau.

With some diffidence I venture the suggestion that, while the distinction which Nordau makes is true, and corresponds with the observed differences in criminals, yet the "Impulsivist" may also be a moral lunatic; irresistible impulses are a well-known feature of insanity in certain of its manifestations. Furthermore, the irresistible impulse is not always, I think, followed by remorse or even by regret: the consciousness that it was irresistible is the self-justificatory plea by which the criminal escapes the normal ethical reaction from his misdeed. The "dejected note in the first four sonnets of 'Sagesse'" (by Verlaine) is possibly simulated rather than genuine. There are criminal "ego-maniacs," as Nordau denominates them, whose exaggerated self-consciousness assumes the form of self-satisfaction, indifference or exaltation, and others in whom it assumes the opposite form of self-dissatisfaction, or depression. This seems to be a more exact statement of the difference to which he alludes.

weak. Ferri, however, carries the analysis still farther, and makes five groups of criminals — the criminal born, the insane criminal, the criminal of occasion, the criminal of passion, and the habitual criminal. These are descriptions, rather than a true classification, since the insane criminal and the habitual criminal may be, and often are, in the anthropological or biological sense of the word, criminals born.

If the various opinions held as to the causation of crime affect the estimate entertained of criminals, in the mass and in detail, no less, certainly, must they influence the choice of methods of dealing with them, in their own interest and in that of the community. There are but three methods which can be suggested, namely, retribution, reformation, or elimination. The problem proposed for solution assumes the form of a trilemma. The criminologists reduce it to a dilemma, by the unanimous rejection of the theory of retribution. The history of criminal jurisprudence, as related in the preceding chapters, demonstrates, first, that retribution is the sentimental and historical basis of the criminal code; and, second, that in practice retributory methods of dealing with violators of law have signally failed. Retribution is a principle in human government congenial to savages and hateful to civilized men. With this alternative out of the way, the discussion confines itself to the other two alternatives named — reformation or incapacitation. Where a virulent and highly infectious disease is epidemic among cattle, the practical question to be decided is whether the infected animals shall be quarantined and confided to the care of expert veterinarians for their recovery, or whether the danger

to healthy animals shall be averted by the relentless slaughter of all suspects. The question of criminal contagion presents itself under a similar aspect. Reformatory methods are more humane, and, where they succeed, equally effective. Repression is possibly speedier and more certain. Cannot both methods be combined, in a single system, by dividing convicts into two groups, the corrigible and the incorrigible, and dealing with them separately? This is what the Elmira system attempts, and the promise which it holds out commends it to criminal anthropologists in general.

In the application, however, of Recorder Hill's dilemma[1] to convicts, by authority of law, the emphasis will naturally be laid, by different officials, upon one or the other alternative; one or the other group of offenders will be unduly augmented in the classification, and the resulting administration may incline to excessive severity or excessive indulgence. The influence which most directly and strongly affects the inclination of individuals, in this regard, is their position upon the question of heredity. Belief in the preponderatingly hereditary origin of crime warps the judgment of the observer in the assignment of individuals to the category of corrigibles or incorrigibles, because from his point of view instinctive or congenital criminals are incorrigible and *vice versâ;* and his natural tendency is to discover evidence of an innately criminal predisposition, where it would not be apparent to a sociologist. This belief also serves partially to paralyze the will of the

[1] This dilemma, it will be observed, first suggested itself to the legal, not the medical mind. (See page 217). The biologists have adopted it and are apparently inclined to claim the credit for it.

reformer, since that which is born in a man can rarely be cultivated out of him, either by educational or by correctional processes, but is always reappearing at inopportune moments, even after it did seem to have been subdued. The hereditarians are comparatively hopeless, and they justify their severity by the plea that, after all, it is not the individual but society which has the first claim to consideration; the protection of society is the main thing. The sociologists are less easily discouraged, for a man's surroundings can be changed. They have, too, greater faith in the possibility of effecting an alteration in character by a change of habits.

Criminal anthropology, as thus outlined, occupies the debatable ground between science and philosophy. As a science, it is positive and aggressive. As a philosophy, it consists almost wholly of negations, the chief of which are the negation of spirit, of freedom of the will, and of moral responsibility. Its philosophical conceptions will be commented upon in another chapter. Some remarks upon its scientific validity are here in place.

The value of scientific investigation depends upon a variety of considerations, such as the competency of the observer, the number and extent of the observations, and the methods employed. No observations, however numerous, are of any scientific value (except as material for science) until they are reduced to order by classification and comparison. Observations of the abnormal are of no value without comparison with the normal.

The test of the adequacy and accuracy of the observations themselves is the agreement or disagreement of the observers in statements of fact. In the declarations regarding convicts made by criminologists, disagreements

like those above cited as to their color-blindness or their hearing prove that the examination made was superficial, on the one side or the other, or else that the groups examined were of insufficient size to insure correspondence in the statistical result. This inquiry of necessity assumes largely a statistical form. The opportunities of police and prison officers to obtain, by means of daily contact with the criminal class, more accurate impressions and a better general notion respecting their appearance and character, exceed those of any scientific enthusiast; but they are apt to be unskilled observers, incapable of conducting an investigation after the systematic methods followed in an anthropological laboratory, or of pursuing it to the point of medical interrogation of the vital organs; and the commonplaces of the prison need statistical verification, for which records are necessary, which it is not usual to keep. Now every statistician knows that the limits of variation in the percentages obtained by the mathematical subdivision of any two corresponding groups of observed facts, if the groups are only large enough, are extremely narrow. Where the groups are large, and the percentages do not closely approximate each other, group for group, the difference is the result of causes operating locally, which are either known or can be searched out. Until a sufficient number of criminological statistical tables shall have been made and compared with each other to demonstrate their substantial agreement, without reference to the personality of the observer or the observed, the elementary facts of criminal anthropology can have no scientific authority, for want of an adequate scientific basis.

In the second place, the comparisons which must be made, in order to have any bearing upon the question of the existence or non-existence of a distinct and recognizable criminal type, must be comparisons not of isolated phenomena, but of groups of phenomena. A type, whatever else it may be, is "an *ensemble* of characters." It is not enough to know that certain characters exist in detail in more abundant measure in the criminal than in the non-criminal class; their tendency to repeat themselves in certain specific combinations must be proved, and the combinations themselves described. The new science, if it is a science, is not yet in position to attempt anything of the sort. The extreme difficulty of such a comparison is probably unsuspected by the great majority of its votaries.

Furthermore, if every criminal in the world were listed, examined, a truthful report made of all his essential peculiarities, and an accurate count made, showing all the important groupings of such peculiarities, so that the result could be tabulated and the percentages calculated, it would still be necessary to have a corresponding report exhibiting the same groupings of the same characters in an equal number of persons never convicted of crime, as a background for comparison, before the assertion that any particular grouping is even *primâ facie* evidence that its subject belongs to a separate anthropological type. The case is here put strongly, in order to impress this point upon the imagination. It would not in fact be necessary to carry the investigation so far. But it is necessary to carry it far enough to secure credibility in the result, and it must be carried as far for the innocent as for the guilty. It is

said that red-haired criminals are relatively more rare than honest people with red heads. How is this known? How can it be known, without a statistical inquiry too extended to be attempted by private initiative? Suppose that the reverse were true; would it be allowable to entertain a suspicion of the honesty of all blondes? The peculiarities recorded in the case of convicts are also observable in honest men and women. Much has been made of cranial asymmetry, about which every hatter who uses a *formateur* can give a criminologist points which would possibly correct his estimate of the value of this particular stigma. A photographer could do the same with reference to asymmetry of the countenance; if he knows his business, he makes every subject sit with the worst side of his face in shadow.

Anatomical remarks are of course the most palpable; for this reason the writings of the anthropologists exhibit the greatest affluence of statistics upon the precise points which are of the smallest relative significance. Of greater importance is the study of physiological peculiarities, especially if they are at the same time pathological and reveal a nervous diathesis analogous to that of the insane or epileptic. But, after all, the most important characters demanding investigation are the psychical. If a criminal type in fact exists, it can be discovered and brought to light only by a demonstration of the uniform or approximately uniform coexistence of certain combinations of physical and psychical manifestations, which are rarely if ever found to be dissociated from each other. Such a demonstration would afford a trustworthy basis for scientific prevision and prediction. The perfection of any science is shown

by the capacity of those who have mastered it to read the future, as astronomers, for instance, are able to foretell the precise moment of an eclipse, while meteorologists can rarely foretell the weather twenty-four hours in advance. Judged by this standard, criminal anthropology is still in the state of adolescence, if not of infancy.

Finally, what is a type? The word is employed in two very different senses. Popularly, perhaps, it is used to express the fact that certain groups of characters repeat themselves in numbers of individuals, without reference to the question whether they are accidental and due to environment, education, or habit, or whether they are transmissible by inheritance. Every such group of individuals bearing a marked resemblance to each other in appearance, habits, tastes, occupations, and so forth, is said to be a type. Even in this sense a single character does not constitute the type, but an aggregation of characters — an *ensemble.* In the strictly scientific sense, on the contrary, an anthropological type cannot be said to exist, where it does not tend in a high degree to reproduce itself in offspring. The *ensemble* of characters which, taken together, express it, must be recognized in a majority at least of the members of a family, a tribe, or a nation, united by ties of blood. They must be inherited from a common ancestor. In the first of these two senses, the existence of a criminal type is admitted, though it may be difficult to define with precision all the elements of which it is composed. In the more restricted and accurate signification of the term, the existence of an anthropological criminal type has not been proved, and it is doubtful whether it can be proved.

In order to prove it, it will be necessary to push the inquiry a step further, and to ascertain, in a sufficient number of individual instances, whether any special group of peculiarities demonstrably attaching to criminals and more rarely found in combination in virtuous, peaceable, honest citizens, did in fact characterize either or both the parents of the criminals in question; or, if not, whether they characterized some more remote progenitor; and whether they are repeated in any considerable number of the near relations of the aforesaid criminals, who may be supposed to have in their veins a large proportion of the same vicious or degenerated blood. Here we touch upon the vexed question, still in suspense, of the transmissibility of acquired characters, into which we cannot here enter, but which is the vital question of evolution, and the central point of this particular controversy.

From these statements the reader may form an adequate notion of the difficulty, as well as of the importance of the task to which these gentlemen have devoted their talents and their energies. The obstacles to be overcome are enormous, if not insuperable. They are enhanced by the ignorance, stupidity, indifference, suspicion, and inveracity of the convicts, who alone, in many cases, can give the desired family history, (which a large percentage of them cannot do), and whose statements regarding themselves require verification, before science can predicate any conclusions from them. When the facts shall have been collected and verified, the work of interpretation will be in order; but it involves so much hypothetical, speculative reasoning, particularly upon the point of the relative importance of heredity

and environment in the production of the specific characters included in each type, that the conclusions formulated will differ with the personal convictions and prejudices of the writer. From the description of an anthropological type should be excluded all characters which are not hereditary, or at least transmissible — cuts and scars, for instance, of which there is a fearful percentage among old, habitual convicts; and yet one observer with little notion of perspective gives undue prominence in his picture of typical crime to the wrinkled faces of prisoners.[1]

Among the questions on which students are by no means agreed is that of normality: what is normal? and what is abnormal? At the Rome Congress of Criminal Anthropology, Albrecht entered the controversial arena with the astounding motto emblazoned upon his crest: "The criminal alone is normal — not the honest man." (David said, in his haste, that all men were liars). There is also apparent a tendency to division upon the question whether murder or theft is the more truly typical crime; which of the two can be most clearly traced to a prenatal origin. Garofalo thinks that murder is the crime *par excellence* and that the sentiment of probity is, evolutionally speaking, "more recent" and less transmissible by inheritance; that causes external to the thief himself, such as hard times, want of employment, etc., more directly affect the preva-

[1] There is indeed a wrinkled face — the face of an idiot child, with a prematurely old look (though this may also be compared to the wrinkled faces of the newly born), which is connected with congenital defect; but there are also wrinkles of remorse and care, of passions indulged, which are purely individual and largely due to environment.

lence of crimes against property. Habitual theft, however, is more common in the aggregate and probably also more common relatively to the whole number of crimes of violence or of dishonesty, than habitual murder; so that the late and lamented Mr. Richard Vaux, who was not an anthropologist, but who was for more than half a century connected with the board of management of the Eastern Penitentiary of Philadelphia, would exclude from the "crime-class" all convicts who are not thieves.

The pretensions of the new science are therefore out of all proportion to its achievements and its claims. Some of its more enthusiastic devotees claim to be able, at least in some cases, to name the variety of crime to which a convict has an instinctive predisposition, without seeing his criminal record. Others believe that they can predict, without reference to the past history of an individual, even in the formative period of youth, the crimes which he will commit. The law does not deal with criminals *in posse*, but with criminals *in esse;* it takes no notice of criminal impulses which do not culminate in criminal acts. It makes action alone the test of crime, and recognizes no classification of criminals not founded upon the classification of crimes, except the distinction between first offenders and recidivists. This, the criminal anthropologists think, is an error in jurisprudence, and they insist in effect that the courts should be converted into medical clinics, and that judges and attorneys should be required to attend lectures on criminal biology, as a condition of admission to the bar, in order that they may be qualified to pass judgment upon the question, not merely "What has the

culprit done?" but "What will he do?" The answer to these pretensions is simple and obvious. The law deals with crime; when a crime has been committed, the man who committed it, if he can be identified and taken, must be punished. His punishment ends, so far as the law is concerned, with his commitment to prison. There his treatment begins; and it is the prison, not the court, which offers the only appropriate field for the labors of the criminal biologist.

The establishment of criminal clinics in prisons has been proposed, for the promotion of the biological study of convicts. Madame Arenal, perhaps the greatest woman of ancient or modern Spain, has pointed out the difficulties in the way of a profitable use (by outsiders) of the biological material in prisons. They consist in the general effect upon discipline, in the necessity of obtaining the prisoner's consent to serve as an object of minute investigation, in the certainty that the subjects who would offer themselves for this purpose would be precisely those of least value to science, and in the probable incompetence of the observers, owing to their want of constant and complete familiarity with the varying "moods" of convicts. She is of the opinion that scientific observations on criminals can be made only by the physician, the chaplain, the visitors appointed by prisoners' aid societies, and employees who possess the requisite gifts of heart, of intellect, and of character, to make themselves loved and respected by the prisoners. This observation must be without preconceived opinions, and its purpose must not be apparent to the prisoner himself. Only those who see the criminal in his natural state, in his hours of discouragement

and of resignation, when he revolves schemes of vengeance in his brain, or resolves to reform; when in his rage he curses the witnesses who testified against him, or in tears recalls the memory of his mother; when he lies, and when he speaks the truth; when he broods in sullen silence or opens his heart with effusion; only those who individually, one by one, but alike inspired by the loftiest sentiments of charity and devotion, get near to the prisoner, can know anything of what passes in his mind, or furnish facts of any value to criminal psychology. She concludes her remarks on this subject with the declaration that, as it is written in the Gospel, "Seek ye first the kingdom of God and his righteousness, and all these things shall be added to you," so may it be said, "Seek first the amendment and consolation of the criminal, and to this it shall be added that you will arrive at a knowledge of him." He who approaches him with no other aim than that of studying him will never know him; here, the sole path of science is that of humanity.

Nevertheless, the attempts which have been made to place criminal anthropology in the rank of a true science are worthy of the highest commendation, because they serve pre-eminently to bring into high relief the truth that criminal jurisprudence has reached a period in the history of civilization, when it can no longer afford to confine its attention to the crime and the penalty for crime, but must take notice of the criminal also. The attack upon the legal profession by the medical profession is justified by the necessity for establishing harmony between statutory and natural law, which has been disturbed by the blind conservatism of the crimi-

nal code, clinging to exploded precedents, and refusing to recognize the demand for new foundations and a new superstructure. The actual work of renovation can be effected only by lawyers, since the changes to be made in the law must not contradict the established principles of civil government and of judicial procedure. But reforms in existing institutions are rarely, perhaps never, brought about, except by agitation and pressure from without. It pertains to the medical and clerical professions, acting in concert but from opposite directions, to formulate the demand for the indeterminate sentence and for a reformatory discipline in prisons, properly guarded, so as fully to protect individual rights, justice and freedom. It pertains to the legal profession, and to the people represented in the legislature, to meet this demand. When the demand shall be met, as it surely will be, the criminal anthropologists will be entitled to their full share of credit for promoting and keeping alive the agitation to which the benign result will be due.

One immediate and practical result has already been accomplished, if no more; the recognition of the value of anthropometry as a means of identification of criminals, and detection of recidivists. Anthropometry is an aid to anatomical study only, and therefore its scientific importance, according to the views expressed in this chapter, is comparatively slight. But the measurements taken of the bony skeleton — the height, length of the extended arms, of the limbs and their component parts separately (including the fingers and the feet), and dimensions of the skull and chest — do not precisely correspond in any two human beings, in their totality. Dr.

Alphonse Bertillon, of Paris, has grasped this thought, and he has devised a set of instruments for taking these measurements, and a system of recording them upon cards and arranging the cards systematically, so that, under the classification which he has invented, they can be consulted with as much ease as a dictionary, or the card catalogue of a library. His card catalogue of convicts is the best conceivable form of a universal criminal register, upon many accounts; not only because it is practical, accurate, and adequate; but because the habitual convict whose criminal record is needed for any legitimate purpose can be unmistakably identified thereby, without any knowledge of his name; while the accidental or occasional criminal who does not relapse into crime, and is not again arrested, is therein buried out of sight as irrecoverably as if the record had been destroyed in the central fires of the earth. It has been adopted by many nations, states, and municipalities; but for the highest utility in this country the creation of a central registration bureau is a necessity, which should be under the control of the Federal Government, as the only suitable and proper agency for its creation and maintenance.

CHAPTER XII.

THE CAUSES OF CRIME.

The phenomena observable in nature and in life, when carefully studied, are found to occur in orderly succession. Each change in the size or shape of a material object, or in the direction and velocity of its movement, if in motion, is preceded and followed by other changes, so related to it, that we often speak of the change which occurs first in the order of time as the cause of the change which succeeds it. This is, however, but a loose way of speaking. We refer these changes to the operation of what we, in our ignorance, call force; we classify forces, as we classify substances; we see a connection between the transformations of the one and the alterations in the other. We conceive of the forces which operate to produce an alteration in matter as either intrinsic, that is, resident in the substance under observation, or extrinsic, that is, originating elsewhere and acting from without. What is true, in this regard, of the physical is true also of the psychical.

Now crime, whether we have in mind the criminal disposition, tendency, or impulse, or whether we mean by this word a criminal action, is a phenomenon. When the question is asked, to what cause or causes must the occurrence of this phenomenon be attributed, it may be answered from three distinct points of view.

(1) The answer may be confined to the consideration of the observed order of events, and it may be merely a statement of the conditions which precede (singly or collectively) the manifestation of a criminal tendency or the perpetration of a criminal act. This is the answer given by the statistician, who lists the possible causes precedent (such as ignorance, poverty, and intemperance), and shows mathematically that they are followed by criminal acts in a certain percentage of instances; the higher the percentage, the closer is the presumable connection between the alleged cause and the alleged effect. The statistical method of inquiry is, however, open to two objections: first, that the connection, even where it is demonstrable, may be accidental rather than efficient; and, second, that the coincidence of two statistical facts does not in itself determine which of the two is primary and which is secondary, nor whether both may not have a common origin in a third which, perhaps, is not included in the scope of the investigation. Furthermore, admitting the accuracy of the observations and calculations, and that no mistake has been made as to the actual order of sequence of the phenomena in dispute, the mere fact of sequence, even if it is invariable, is rather a hint than an explanation; it suggests the existence of a causal relation, but does not reveal the method by which the supposed cause operates to produce crime.

(2) The cause of crime may be sought in the criminal himself — in his history, prenatal and postnatal; and in his physical, mental and moral organization and capacities. This may be called the subjective answer.

(3) It may be sought outside the criminal — in his

education, training, and all the external circumstances and influences by which he is surrounded, from his birth until his death. This is the objective answer.

Only the two last named are, in truth, answers; and each of them will take a different form, according as he who seeks to explain the etiology of crime inclines more or less strongly to a purely naturalistic and material interpretation of intellectual and moral manifestations. In a general way they correspond to the biological and sociological explanation of crime in the last chapter, but not precisely, since the subjective effect of environment is here classed with the hereditary constitution of the criminal.

It is not necessary, for practical purposes, to go so deeply into metaphysics. Another view of the subject may be presented, as follows: For the commission of a crime, three conditions must be present, of which two are positive, namely, a motive and opportunity; and the other negative, namely, the absence of adequate opposition or restraint. The negation involved may be, of course, the negation of the impulse or of the opportunity; in the latter event, it may be mechanical or moral. These may be called respectively, causes of the first, second, and third class.

(1) The causes of the first class are in the nature of desires, physical or mental. The appetites and lusts have their seat in the body. So, according to the materialistic or monistic philosophy, do the sentiments; but this is not conceded by those who reject that philosophy. None of these appetites, lusts, or sentiments is in itself criminal. Each of them subserves a useful purpose and

is essential to perfect manhood. Any one of them is dangerous if excessive, that is, if disproportionate or uncontrollable: the highest as truly as the lowest. The want of due and proper balance between them indicates a certain congenital or acquired liability to crime or insanity; the margin is narrow which separates these two. Indulgence and exercise tend at first to heighten the intensity of any appetite or passion, but in the end to its exhaustion and consequent extinction, when, if death does not ensue, the victim of his own lusts becomes the prey of unavailing regret — not necessarily penitence, for it may be merely the bitter and angry sense of loss of the power of enjoyment. Any appetite — hunger, thirst, the craving for stimulation, either by internal or external application of any stimulant whatever; any physical lust or passion; any mental desire — for knowledge, or fame, or power, or wealth, or love, or revenge, or even for divine favor and assistance, when carried to the extreme of religious fanaticism, may be the motive which prompts its subject to commit an act contrary to law — forbidden by the law of God, or of man, or of both God and man.

(2) Among the causes of the second class must be included all objects, animate or inanimate, personal or impersonal, by the unlawful use of which an excessive or unregulated desire of any sort can be gratified. Property is the occasion of theft; lewd women of licentiousness; virtuous women of rape; spirituous and fermented liquors of intoxication; men, women, and children of murder. None of these can act as a provocative of crime, if absent or inaccessible. None of them can so act upon a nature not abnormally excitable

or weak, in some direction. Open or covert advantage may be taken, with or without violence, of an opportunity for the indulgence of a criminal disposition. Where the desire and the occasion meet, the question whether a temptation which proves irresistible is from within or from without is empty and profitless. It is both.

(3) Causes which fall under the first of the two preceding categories may be termed inherent or instinctive; under the second, exciting. Causes of the third class are contributory. The concurrence of an unsatisfied wish, however intense, and of the opportunity to gratify it, will not result in the violation of any law, natural, moral, or statutory, if the considerations which oppose the impulse to self-indulgence present themselves to the mind with sufficient clearness and power to prevent the commission of a criminal act. These counter influences may be classified, as follows: —

They are either subjective or objective.

The tempted are protected, first, by the antagonism between rival instincts and impulses, which prevents the simultaneous gratification of inconsistent desires, for instance, what we call the animal and the spiritual. This rivalry extends farther: not only are the so-called higher and the so-called lower elements in human nature in mutual opposition, but the higher and the lower instincts contend with each other, each in their own sphere, for supremacy. In a symmetrically developed, well-balanced man, no one of them can dominate the rest to a degree which will deflect his course of action very far from the line which represents the normal resultant of all his propensities taken together. The

dangerous men in any community, whose conduct is erratic and a menace to social tranquillity and security, are exceptional, in the sense that some of their natural faculties are dwarfed, in inverse proportion to the degree of exaggeration of others. They are the men of one idea, or one preponderating passion: the fanatics, the "cranks" or paranoiacs, the notably sensuous or avaricious or ambitious; men exclusively animal or exclusively intellectual; idiots and lunatics. Genius, saintliness (by which is here meant not purity and self-sacrifice, but abnormal religious exaltation), and even scholarly attainments, when not offset by common sense and prudence, are all perilous to the gifted individuals who rejoice in them, but who are partially thrown out of balance by their possession. The commonplace men and women of this world are the least liable to fall into crime, under the stress of temptation.

More specifically, the two principal safeguards against crime included among those which are purely personal, are intelligence and conscience. The converse of intelligence is ignorance, but of conscience is depravity. Ignorance is a contributory cause of crime, in so far as it obscures the perception of the nature of a criminal act, or of its consequences. Depravity (insensibility to ethical considerations) may, however, consist with a high degree of intelligence, if the recognition of one's own interest and of appropriate means for its selfish promotion is unaccompanied by a normal development of the altruistic sentiments — affection, compassion and benevolence; or by a proper reverence for authority, human or divine.

The last of the individual contributory causes which

remains to be named is weakness or perversion of the will, manifesting itself in instability on the one hand, or in obstinacy, pertinacity, indocility, contrariety, and rebellion on the other.

At this point we pass to the consideration of the objective contributory causes: one's surroundings and one's relation to them.

Let us begin with the family. The assertion that the worst home is better than none would be hyperbolical, yet it is an extravagance which approximates closely to the truth. The restraining influence of family life, especially upon the young, is due to the example therein set, to the instruction imparted (the school is merely a convenient substitute for the home), to the disciplinary training given, to the regular occupations and innocent recreations of the household, to the affections awakened and exercised in the family relation, and to the practical development of the ideal of individual rights and mutual obligations in the domestic circle. The chaplain of an American prison has observed that a disproportionate percentage of convicts are "only sons," who have been unduly indulged, petted, and spoiled, not simply because they absorbed the entire natural affection of their parents, but for the want of the training which brothers and sisters would have given them: comparatively few criminals are reared in the atmosphere of mutual help, subordination, and sacrifice, which large families of living children imply. It is probable that an inquiry specially directed to this point might even result in the demonstration of the thesis that family life, where the juvenile members are all of one sex, supplies a less effectual check upon the one-sided development of char-

acter, than where the selfishness of sex is corrected in youth by the free and innocent companionship of brothers and sisters. Orphanage is an acknowledged cause of crime. Bachelorhood and spinsterhood have their own peculiar and recognized perils. The influence of the home can scarcely be over-estimated, even upon adults. Parents are compelled to make sacrifices for their children, and are ennobled by the sacrifices which they make; they also see in their offspring an inverted image of themselves, by careful attention to which they become conscious of faults which might otherwise escape their notice; and the conviction that their example will be imitated, that their conduct will lay the foundation for the success or failure in life of their posterity, and that dishonorable conduct on their part will reflect disgrace upon those who come after them, is a powerful incentive to integrity and purity of life. Not only parents and children, but husbands and wives, when both are noble, and their relations are harmonious, stimulate and aid each other to the attainment of a higher life. The influence of home life as an antidote to crime depends directly upon its purity, peace, refinement, unselfishness, good order, activity, its intimacy and privacy, its hospitality, and its happiness. In the ideal home, the exercise of parental authority and the freedom of the individual child so exactly balance each other, that the sentiments of personal responsibility and of filial reverence grow side by side in his heart, without overshadowing or uprooting each other. There is no more prolific cause of crime, of the third class, than the want of a true home life in childhood and early youth.

The healthy or unhealthy development of a child is

affected chiefly by his studies (including his reading), his occupations and his recreations. These are in turn more or less dependent upon the location of his home and the character of his associates. Everything that goes to make up a child's life exerts a certain influence upon his destiny. He may create his own opportunities and rise superior to his surroundings, but not unless he possesses superior strength of mind and exceptional resolution. There is a contagion of ideas, sentiments, and habits, resulting from proximity and sympathy, the power of which is not always apprehended. We must therefore include among the contributory causes of crime ignorance, or the want of a suitable education — of the hand, as well as of the intellect; idleness, which has its root in indolence, frivolity, or the excessive love of pleasure; vicious companions; and the dissipation of moral earnestness occasioned by worthless, misleading, or immoral books. To these may be added the promotion in early youth of bad habits, by imitation. The influence of these deteriorating forces is greatest in childhood. The child often needs to be protected against the atmosphere by which he is surrounded, and, if that is impossible, he should be transplanted, at any cost.

There is, however, a larger atmosphere, not local but general, not immediate but remote, by which we are all more or less elevated or deteriorated. It is made up of public opinion; social usages; political, industrial and economic conditions; popular sentiment; laws and customs. There is nothing that can be named or thought of, which does not enter as a factor into the composition of the social whole of which we form a part. Identical conditions have their specific reactions

for good or for evil; the individual rises or falls in the scale of ethical value, according as he resists or yields to the influences brought to bear upon him. Everything depends upon his attitude toward them. Abounding temptation may develop the highest type of virtue or the lowest forms of vice. Everything is, or may be, a cause of crime in those upon whom it reacts unfavorably: poverty and wealth; density of population and sparsity of population; employment and unemployment; good times and bad times; city life and country life; health and disease; civilization and barbarism; there is no conceivable end to the antitheses which might here be enumerated.

Nevertheless, certain social causes of crime are especially active and easily recognized, such as vicious legislation, for instance, since the educational power of statutory law must be conceded, even where laws are not rigidly enforced. War, whether it assumes a military or an individual form, is a cause of crime. Much crime has grown, and will continue to grow, out of the unsettled relations, the perpetual and bitter conflict between capital and labor or employers and their employees. Constant employment and adequate remuneration strongly tend to subdue the impulse to theft and violence. The toleration of vice is a cause of crime, by the increased opportunities thus afforded for the culture of vicious inclinations; but so is the fanatical effort to suppress it by violent and impracticable measures, which beget fanatical resistance and are the excuse for a wide-spread and virulent hypocrisy. Unsanitary conditions, especially in the crowded centres of population, are a cause of crime, because they weaken the vitality

of those who might otherwise successfully contend against their criminal tendencies. There are forms of popular amusement which minister to crime, but the absence of proper facilities for recreation, under the grinding conditions of modern life, is equally dangerous. Civilization itself is a cause of crime, by the burdens which it imposes, and the efforts which it engenders to escape those burdens by shifting them upon others; by its fondness for display, its exaltation of the sensuous and material, its scepticism and its pessimism, its fierce competition for pre-eminence, and the unscrupulous means employed to secure it. Religious superstition and the absence of religious and moral conviction are alike causes of crime. So are the undue exaltation and the unconditional denial of authority in Church and State. Many of the maxims and practices of the business world are essentially dishonest, and they are glibly cited by convicted criminals in justification of their own misconduct; the criminal law, paradoxically enough, often catches the little fishes but lets the larger ones escape through its elastic meshes.

In short, crime, upon a large scale, is indirectly the product of the aggregate social state of a given community at a definite moment. Its amount and character are governed by the opportunities which life affords for the legitimate exercise for individual energy and capacity, and the rewards which it offers to such exercise, in comparison with the inducements held out to illegitimate enterprises. The movement of individuals and of the mass will be in the line of the least resistance. The business of the statesman, the philanthropist, and the reformer is to favor the social organiza-

tion and regulations which tend most powerfully to make obedience to law both easy and profitable.

The remark made at the outset of this discussion (which may be characterized as a modest contribution to criminal dynamics), that the causes of the third class are negative and consist in the absence of restraint, external or self-imposed, requires to be modified, therefore, so far as to admit the existence of social causes of crime which operate directly to encourage and intensify the individual impulse in this direction. Yet these must be classed together, since the active causes of crime referable to the social state imply an aggravated form of the lack of proper restrictions upon its growth and manifestation.

There is still another possible classification of the causes of crime. They are either individual, social, or cosmical. By cosmical causes are meant those beyond the control of the individual or of the community: astronomical, geographical, climatic and meteorological conditions. This classification is essentially one of proximity. The cosmical causes of crime are extremely remote. Yet their existence and influence, both direct and indirect, are undeniable. The physical seat of criminal impulses is in the nervous system, which is directly affected by the seasons and the weather. The governors of prisons and of institutions for the insane, and even teachers in public and private schools, will at once recognize the truth of the remark that there are days when the entire population of a charitable, correctional or educational institution acts as if possessed, and that without any apparent cause. Every man who observes his own physical and

mental experiences knows that intense heat and intense cold reduce him to a state of comparative inaction; that the pulses of the spring in his breast drive him to the woods and the streams, kindle his passions, arouse him to new activity; and that a pleasurable sadness characterizes the autumn days, when the nuts are ripe and the apples fall. Indirectly, climatic conditions make life difficult or easy; and they affect the abundance or scarcity of the means of existence. Famine may lead to theft or murder; so may the pestilence. The forms and comparative prevalence of crime are not identical in the mountains and upon the plains, nor upon the sea-coast and in the interior, nor upon a river and upon a railway line. They may be affected by the length of days and nights, by electrical disturbances, by the changes of the moon and the time of its rising and setting, even by a rainy or a dry season, or by barometric pressure. The inquiry into the operation of these causes is curious, rather than practical; but enough statistics have been gathered regarding them, to render it extremely probable that there is a more or less obscure criminal geography and meteorology.

From all that has been said, it may be seen how complicated and various are the origins of crime; not wholly personal or impersonal, hereditary or accidental, animal or spiritual, positive or negative, voluntary or involuntary, universal or local, controllable or uncontrollable. Separately considered, the causes of crime are not of the same order or potency. They are not mutually exclusive. On the contrary, every crime is the result of

a combination of causes, near and remote, direct and indirect, whose number and separate value cannot be fully calculated, and whose analysis is a task of almost infinite difficulty. It is therefore a sign of narrow vision and immature thought, to single out any one cause and attribute the prevalence of crime in any community exclusively to that; or to suppose that the removal of some isolated cause of crime would purify the race and usher in the millennium. The amelioration of social evils is a process of historical evolution — painfully slow and disappointing, but none the less sure; and, happily for us all, so far above human wisdom that, though we may work with God and nature to the predestined consummation of our hopes and efforts, as we best can, and wherever we find an opening, yet the result rests with God and not with ourselves. Equally absurd would it be to suppose that the same treatment, applied to all criminals, irrespective of their ancestral, family and personal history, will be equally effective in all cases for good.

The hope of the race is essentially a religious hope. These five propositions may be deduced from the Jewish and Christian scriptures; that sin is the transgression of the law; that all have sinned and come short of the glory of God; that every transgression shall receive its just recompense of reward; that there is no manner of sin which may not be expiated and forgiven; and that, where penitence and amendment are lacking, the consequences of sin are irremediable. The man with a greater innate tendency to crime may rise superior to himself and his temptations; the man whose instinctive criminal tendencies are far less, may fall under the

power of temptation. None of us are free from criminal weakness, which, in the face of a powerful motive and a favorable opportunity, might blossom into crime. The criminal is a man with like passions with ourselves, entitled to our sympathy, and our help. God, at least, is no respecter of persons. To doubt that in the end truth will prevail over error, and righteousness over unrighteousness, is to believe in the devil, rather than in God. The cause of truth and righteousness, indeed, does not need us; but it is our privilege and our duty to be on that side; and we can hasten its triumph only by overcoming evil with good, not recompensing evil for evil, but meeting scorn with pity and hatred with love. In this, the teachings of religion do not contradict science, nor are they contradicted by it. Really, true science and true religion cannot contradict each other, since truth is one. Such apparent contradiction as there may be is purely speculative, and relates to the unknown beginnings and the final end of the universe and all that it contains — to questions of being and substance, not of practical duty.

CHAPTER XIII.

THE THEORY OF PUNISHMENT.

PUNISHMENT is inflicted, not by the State alone, but by all persons vested with any measure of legal authority, however local or temporary : by parents upon their children, by teachers upon their pupils, by masters upon their slaves, by employers upon their employees, by military and other officers upon their subordinates, and by the Church upon those subject to its ecclesiastical jurisdiction. No definition of crime is complete, which does not cover all of these cases. Is it a right ? Is it a duty ? What is its ethical basis ? In whom is this right vested ? What are the proper limits of its exercise, and the extent of the correlative obligation ?

The nature of punishment necessarily involves suffering, in the form of pain or loss — of honor, of place and power, of property, of liberty, or of life. It always implies the forfeiture of what would otherwise have been admitted to be a right inhering in the sufferer, who suffers because he has perpetrated a wrong. The primary object of punishment is, in every instance, to maintain or to restore social order, by enforcing obedience to established rules. These rules are the expression, not so much of the personal will of a ruler, as of the collective will of the community, of whatever size, whose autonomy it is important to maintain. In so far as they are arbitrary, they are unjustifiable and

defeat their own aim. It cannot be too strongly insisted upon, that there is no righteous law, which is not a part of the law of nature and in harmony with it. Laws or rules, whether ecclesiastical, political, economic or social — whether the medium of their operation is the Church, the State, the family, the army or navy, a trade, a guild, or any other association of men — have no validity, except in so far as they are more or less perfect expressions of the universal law of nature. Man can not make law. That is the prerogative of the Almighty. Man can only formulate such fragments of the universal law as may have been revealed to him, or he may have been able, by the exercise of his own intelligence, to discover and apply.

Statutory law, with which alone we are here concerned, is the will of the nation, published, in a written and enduring form, for the information of those subject to it. It may be moral or immoral. It is moral, when the will of the nation coincides with the divine will; immoral, when the will of the people and that of the Almighty are in opposition to each other. Its highest sanction is found, not in the penalty which attaches to its violation, but in the response which it awakens in the individual conscience. It is most easily enforced, when obedience to it is obviously the interest of all who are under legal obligation to submit to it. If all human laws were absolutely right and equitable, and if all men were sufficiently intelligent to form a just conception of their personal interest, and sufficiently conscientious to respect the rights of others, from an inward love of justice to their fellow-men, the necessity for legal penalties would no longer exist. The gallows would go the

way of the cross, which has long since disappeared; our prisons would become moss-grown ruins; there would be no courts, no armies, and no necessity for either. The golden age would be a living reality, and not, as it is now, a beautiful dream. Our legal system, in all its parts, is a virtual confession of man's incapacity for individual self-government, notwithstanding our claim to have created that system and to be capable of administering it; and one can scarcely contemplate it, or participate in the effort to perfect it, without a certain deep humiliation of soul, proportioned to the degree of our consciousness of the weakness and imperfection of human nature.

The right of the State (or of the social whole) to punish offences against the criminal law, has been defended on various grounds.

Kant holds that it is derived from the principle of abstract justice, and from the solidarity of the human race; that its purpose is not to prevent crime, but to satisfy justice; and that its efficacy consists essentially in expiation and reparation.

Hegel takes very different ground. According to him, punishment operates upon the individual conscience as a measure of repression; it is a sort of psychological intimidation, and should not be pushed any further than is necessary to insure security. He deduces the right to inflict punishment from the principles of objective ethics. It is the chastisement of the negation implied in the criminal act; it attacks crime in its root — in the conscience of the law-breaker, and of all who have any knowledge of his offence and of the reaction against it.

Fichte teaches a modified theory of the social contract, of which crime is the violation. All criminal acts merit the seclusion of the offender from the pale of the social organization, as an irrational being. Punishment is a species of composition, by the endurance of which the culprit regains his social status and rights. The doctrine of the social contract, first brought into prominence by Rousseau, led to the French Revolution and is largely responsible for the good and evil which resulted from that great social convulsion; but it is an undemonstrable hypothesis, inconsistent with admitted facts, and is now generally abandoned as untenable.

The utilitarian theory, of which Bentham is one of the leading advocates, justifies legal punishment on the ground that it tends to secure the greatest happiness for the greatest number. But what is "happiness"? who shall decide? Necessarily, every man for himself. The lowest possible ethical ideals are justified, on this hypothesis, if they are the ideals of an actual numerical majority. Again, what is the "greatest number"? To what limits of time or space is the count to be confined? and who is to make it, and declare the result?

Neither in the doctrine of the social contract nor in the utilitarian theory is it easy to see any recognition of the ethical nature of crime or of punishment. Punishment, under either of these theories, is simply an act of the majority, which, in a purely selfish spirit, sacrifices the criminal, for its own protection, upon the altar of a supposed social necessity.

To return to the criminal anthropologists, whom we left in a preceding chapter, their philosophy is that of the purely materialistic school. Signor Ferri devotes

the first part of his "Theory of Responsibility" to the demonstration of the thesis that there is no such thing as freedom of the will. It is a delusion of consciousness, a figure of speech — as when we speak of the rising and setting of the sun. He refuses to accept the dogmas of the soul and of God; immaterial beings have no existence out of the imagination which creates them. In the Congress of Criminal Anthropologists at Rome, M. Moleschott boldly avowed that the denial of free will is the postulate upon which all their researches proceed. Necessarily, since power and responsibility are correlative terms, where there is no freedom, there can be no responsibility. Accordingly, Signor Vito Porto declared it to be his opinion, that "the greater the crime, the less is the responsibility of the perpetrator." If the law of causation excludes the notion of the freedom of the will; if the mind is not an entity, but a function of the body or mere self-consciousness; if human passions and desires and volitions are necessary products of the physical organism; crime may be anti-social, but it cannot be said to be immoral. Its punishment then becomes an act of social antagonism to individuals out of harmony with the social whole, who are crushed by the manifestation of superior force. Signor Ferri therefore finds, in his programme of an improved criminal jurisprudence, no place for repentance and amendment on the part of the culprit; that, from his point of view, is an impossibility, and it can be effected neither by intimidation nor by education. Thus the basis of the Elmira system tumbles into the abyss and dissolves into thin air, together with all the rest of the mystical, mythical beliefs which characterize the infancy of the

human race. His mind reacts against reformation as an end to be sought in the treatment of the criminal, and he asserts that his elimination is the sole function of the criminal law.

The harshness of this view is obvious. John Calvin's religious philosophy is in a sense necessitarian; but, consistently or inconsistently, he taught with equal positiveness that the will is free, and that men are responsible for their actions, because it is free. The seeming fatalism with which he is charged by his theological adversaries was at least softened by his conception of a personal, loving, pardoning God, by whom the iron law of a material and philosophical necessity is providentially and mercifully administered. Here we have all that is repulsive in Calvinism (except the dogma of eternal punishment, which is equally held by the Roman and Greek churches, and by all evangelical Protestant sects), shorn of everything which lightens the despair of the human mind, when it is overborne by the thought of an inexorable, inevitable, relentless, cruel fate, which, by the law of inheritance pushed to an extreme, dooms the entire criminal class to inevitable destruction.

Its harshness is, however, the least of the objections to it. It is of course merely a speculative, metaphysical opinion, like the opposite opinion for which it is the alternative; neither the monistic nor the dualistic view of the universe is demonstrable. But scientific conclusions rest upon scientific premises, and are sustained by reasoning which falls within the domain of pure physics; while philosophical, as distinguished from scientific conclusions are supported by metaphysical arguments, and rest upon metaphysical postulates derived

not from observation but from consciousness. There is a certain inconsistency in denying the validity of metaphysical reasoning and at the same time resorting to it. But a logical conclusion must be contained in the premises: a metaphysical conclusion cannot be contained in physical premises, nor *vice versâ;* and it is further to be observed, that from positive premises the materialists derive an essentially negative conclusion. Their mental processes do not commend themselves to a sound logical judgment. Finally, the tendency of the materialistic philosophy appears to be degrading, in its reduction of higher to lower forms of life, and of higher to lower motives; besides, it kills hope and aspiration. So long as it is unproved (and it cannot be proved), we are free, for these and other reasons, to reject it. It commends itself intellectually to those whom, for want of a better word, we may term *simplicitarians,* because they confound the paradoxical with the false. Ethically, it commends itself to the sensuous, the sceptical, and the self-indulgent.

All of these theories (including even the last, but with certain reservations) are glimpses of the relation of punishment to the order of the universe and its maintenance, obtained at different angles of vision, and all of them are therefore more or less one-sided and partial. The criminal law appears to rest on a threefold basis, not upon a single principle. It has three distinct aims; and, in this respect, it may be compared to a tripod, which falls to the ground when either leg gives way. (1) There is in it the element of retribution seen by Kant, or the recognition of the rightfulness and obligation of expiatory sacrifice, a sacrifice made to the sense

of justice which is inextinguishable in every human breast. (2) There is in it the element of deterrence seen by Hegel. Its judgments are monitory and minatory, they do not affect all persons alike, their influence over the minds of congenital and habitual criminals is very slight, but they aid materially to restrain the feet of those who are naturally disposed to do right, from wandering into crooked paths. (3) The criminal law is also, when it is rational and equitable, and is administered with intelligence and humanity, designed and adapted to effect the amendment of those subjected to its afflictive penalties. The model of human government is found in the divine order, in which we are chastened for our profit. The judgments of God are designed to lead us to repentance.[1]

[1] It would perhaps be possible to formulate what might be termed the doctrine of triads, which is sufficiently curious and worthy of examination, for which this is not, however, the proper place. The basis of the doctrine would be the repeated occurrence, in metaphysical analysis, of the trichotomy, that is, the threefold division of almost every subject of thought. Illustrations are as follows: —

God, man, and nature.
Theology, law, and medicine.
The world, the flesh, and the devil; (the three great temptations).
The Church, the State, and the commune.
Despotism, socialism, and anarchy.
Liberty, equality, and fraternity.
Philosophy, science, and art.
The physical, the intellectual, and the spiritual.
Authority, reason, and conscience.
Pantheism, theism, and atheism.

Many others might be named. The recurrence of this triple analysis in so many distinct regions of thought indicates the possibility of a more profound generalization, which should include them all. This is rendered more probable by the fact that the connection in some instances is apparent; for instance, between nature, science, reason, the intellect, medicine, the flesh, and pantheism. But this is

Those who are unable to accept, in any form or measure, the theory of retribution, reduce the basis of legal punishment to a single principle, that of the protection of society. Society is protected, first, by the removal and isolation of the offender, who is thus disarmed and made a prisoner of war, *hors de combat;* second, by the exemplary and deterrent influence upon others exerted by the spectacle of his discomfiture and suffering; but the third and most effectual way in which this result can be obtained is his reformation, which converts an enemy into a friend, and a destructive into a constructive social force. The right of society to defend itself is indubitable, yet it is not without limits. Might is not always right, and the will of the majority is not always just. The individual has rights, and his immolation upon the altar of a supposed public exigency may react against the majority, in the same way in which disregard for the rights of the community by an indi-

merely a hint. There are, so to speak, three mental points of the compass: truth must be viewed from each of the three in succession, to be apprehended in its entirety — since, being finite creatures, we cannot regard it from all three sides at once. Whatever may be our angle of vision, the relations between the divine, the human, and the natural are such, that they present to our minds a blended image; and what we see of either corresponds to what we see of the other two, the connection between them being immutable. This is suggested as a possible explanation of the existence among men of three distinct and divergent views of the origin, nature, and treatment of crime. As a traveller, before undertaking to make a map of the world, must explore it in all its parts (which involves sailing around the globe), so, to form a complete and exhaustive theory of crime and punishment, these three views must be, by an intellectual effort, united in a consistent whole. It is unnecessary to reconcile them, since each of them is confessedly partial. Truth is spherical; only an infinite intelligence can embrace it by a single act of perception, but what we cannot perceive, we may nevertheless conceive.

vidual reacts against that individual. The theory of social protection is hardly broad enough to cover every case that may arise in the administration of the criminal law. It ignores too much the moral aspects of crime, and has too little analogy to the divine government, which always has in view the recovery of the prodigal son or daughter, in an unselfish spirit, as taught in the Christian religion by the sacrifice of the Son of God for the redemption of the race.

The history of criminal jurisprudence is the reflection in miniature of the history of the human intellect and conscience. With advancing morality, measures indispensable in a former age become repugnant to the popular sense of right, and therefore obsolete. The order of advance is logically coherent, from beginning to end; the dial of progress is clock-faced, and the inner ear of the historian joyfully recognizes the sounding of each successive hour, as the hammer of God falls, making the heart of humanity vibrate with ever new and higher aspirations. Through the entire cycle, the pendulum has swung backward and forward between the right of the ruler and the ruled, of the individual and of the mass, the man who wielded the rod and the man upon whose back it fell. Self-control, to whatever extent it has been practised in any age, has done away with the former necessity for extraneous control; in other words, progress is but another name for the gradual emancipation of the race from civil, political, and ecclesiastical tyranny. Justice was the original watchword of the friends of freedom. Fraternity or universal brotherly love was the new rallying cry which came in with the Christian era, as Tacitus admits, when he denounces

"the scoundrels, the disgrace of the human race, called Christians, who in their conventicles teach the dangerous and utopian doctrine that all men are brothers, and that, without distinction of birth or rank, they owe to each other not only justice but affection." Equality is the socialistic ideal, whose realization seems to be far in the future, if it is indeed anything more than a dream.

CHAPTER XIV.

THE PREVENTION OF CRIME.

THAT prevention is better than cure is a truism which applies to crime as it does to all other evils, individual or social, physical or moral. There are five principal methods of preventing the growth of crime and reducing its aggregate volume, which will be briefly set forth in the pages which follow.

(1) The most effectual method, so far as it is possible to adopt it, would be to put a stop to the operation of the causes in which the criminal impulse originates, and which favor its development and gratification and its spread by the contagion of sympathy and mistaken toleration, if not approval. As has been shown, the causes of crime are so numerous, so complex, and some of them at least so remote, that the attempt to control them is visionary and can have no practical outcome. This is pre-eminently true of what have been termed the cosmical causes of crime, but it is true also of those large intellectual and social movements in which individuals and communities are caught up and carried away like a leaf upon the bosom of a raging flood. Political, no less than physical evolution, is a part of the order of nature, a thing so high that the forces which impel it forever onward and the mechanism by which it is operated are beyond our reach, no matter how high we may climb.

There are, however, some acknowledged causes of crime

which are measurably within our power to abate, if not to annihilate. Popular education, for instance, tends to diminish the volume of crime, because it is an antidote to ignorance, gives larger views of life and of its responsibilities, and, by disciplining the mind, strengthens the power of individual and communal self-control. What is true of education in general is specifically true of religious education, which is necessarily hostile to superstition, to sensualism, to self-indulgence, and quickens the sensibility of the soul to the higher motives which it supplies, pre-eminently the hope of spiritual perfection and of immortality; also of industrial education, which both preserves the balance between the culture of the physical and the psychical elements in its subject, and fits him to earn a livelihood by his own exertions, thus furnishing him with a powerful protection against the temptation to pauperism and to theft.

It is not enough that he should be fitted to earn a living; the opportunity to earn a living must also be guaranteed him, and he must be secured in the possession of the wages to which he is entitled for his labor, and to the legitimate profits upon any investment of capital which he may have made. The adjustment, therefore, of land and labor questions upon a sound economic and ethical basis would result in an immediate diminution in the number of agrarian and pseudo-industrial crimes.

Voluntary arbitration of industrial disputes or an appeal to the courts instead of to physical force, whether on the part of the employers or the employed, would be in the interest of peace, order, and security, and should, therefore, be encouraged. This remark replies equally to disputes between nations. The substitution of inter-

national arbitration for war, by an international agreement and the creation of some international tribunal with power to enforce its decisions, would dry up one of the most fruitful sources of crime upon a large scale in the world.

The statistics of American prisons show, and the judicial statistics, if we had them, would still more clearly show, that a disproportionate number of felonies and a yet more disproportionate number of misdemeanors are committed by foreign immigrants or their immediate offspring. Hence it has been argued that a violent check should be put upon immigration from Europe to the United States. Apart from the difficulty of devising and enforcing a suitable check, and admitting that ex-convicts at least should not, as now, be dumped upon our shores with the connivance, if not the active intervention, of governmental and philanthropic agencies for promoting emigration, nevertheless our past experience has taught us that, if these undesirable immigrants do not come in too great numbers and with too great rapidity, they are in two or three generations assimilated to our own community, and, after training under democratic institutions, learn the lesson of self-control and are thenceforth numbered among our most valuable citizens. Hostility to foreign immigration might very easily be pushed to such an extreme as to result in a loss rather than a gain to this nation.

The home is so potent a factor in the promotion of private and public morality, that all assaults, direct or indirect, upon the family as an institution should be sedulously resisted, whether they take the shape of attacks upon marriage, the tacit encouragement of license

in manners, or the extreme tendency to luxurious living which renders married life inconsistent with social position and consideration; to these should be added the public sentiment which admits entrance upon the marriage relation with no higher aim than physical pleasure or social advantage, and particularly the formation of the marriage contract with a deliberate purpose to avoid its natural and healthy consequence in the birth of children.

Undoubtedly the corruption in modern political life, which is most apparent in the administration of municipal governments, but a less crying evil in state and federal legislation, is a potent cause of crime, for which the only remedy is municipal reform. It must always be remembered, however, that legislation is not in itself a remedy; that righteous laws which are not duly enforced, because not sustained by public opinion and sentiment, aggravate the evils which they are designed to cure, since their effect is to develop a wide-spread contempt for law in general, and to encourage license.

Intemperance is an indirect rather than a direct cause of crime; and legislation in opposition to it, if it could be enforced, or wherever it is enforced, no doubt tends to reduce the volume of crime in a community whose habits are temperate, even though total abstinence from the use of intoxicating liquors may not be universal or even general. But it is difficult to believe that the absolute prohibition of the manufacture and sale of ardent spirits would have the far-reaching and immediate effect in putting a stop to all crime, which some of its enthusiastic advocates imagine that it might have.

In a word, it is more practicable to restrain the opera-

tion of the causes of crime in individuals than in the community at large. Crime is directly affected by the age of those by whom it is committed. In youth and early manhood the nature of a criminal action is less clearly perceived, as are also its consequences; youthful impulses are more violent, and the lesson of self-control has not yet been fully learned. In old age, the unprofitableness of crime is more clearly recognized, and the audacity which it requires for its successful perpetration has diminished with the failing powers of life. Hence convicts are, for the most part, men in early middle life. The possibility of checking their criminal tendencies is therefore largely a matter of individual influence over them for good before they reach years of maturity.

Hereditary causes of crime are as completely beyond our control as are the cosmical. But heredity is a continuing influence, with an outlook in the direction of the future, as well as of the past. It has therefore been supposed by some earnest and well-meaning people that crime could be sensibly diminished by the perpetual isolation of habitual, hardened offenders, or even by a resort to an obvious surgical operation. This notion is founded upon the belief in a criminal anthropological type, which is not proven. If such a type in fact exists, the difficulties in the way of a judicial determination of the question whether any convict who may be named does or does not constitute a member of a hereditary criminal group, would be almost if not quite insuperable. It is not to be supposed that the determination of this question could be left to the authorities in charge of the prison, nor even to a commission of

medical experts. This is a point at which great consideration must be shown for the individual rights, not only of the convict, but of his possible posterity. Any violation of those rights, even if authorized by statute, would bring about a violent and dangerous reaction. There are slight indications of a tendency on the part of so-called science to invade the domain of personal and private freedom, similar to the encroachments upon the same domain in past ages in the name of religion. But the evils of an exaggerated ecclesiasticism are no greater than would be those of a scientific hierarchy, if it were possible to organize it.

(2) The point at which preventive measures are most necessary and efficient has been indicated. The first duty of the State is to the child. Every child has a natural right to such education and training as will fit him for the discharge of the duties of citizenship. The obligation to supply this education and training devolves, in the first instance, upon his parents. If they are unable to meet it, it must be supplied by the State; but if they are unwilling to meet it, there is a demand for compulsory interference on the part of the State. In the matter of education, as in that of charity, the ultimate appeal is always to the State, as the representative of the entire community, the only agency which can provide the necessary funds for carrying forward enterprises demanded by the common interest of all the members of the body politic, but to which a portion of that membership is averse and refuses its just and equitable contribution. To any extent to which private zeal and benevolence, ecclesiastical or non-ecclesiastical, chooses to meet this demand, the State is

relieved of the responsibility which would otherwise devolve upon it. To this the State has no objection. That to which it objects is partnership with individuals in the administration of governmental functions, because such partnership obviously lays the foundation for needless complications and conflict. Education, where it is by law made compulsory, seems to many to be an interference with parental rights; with the right of the parent to say whether his child shall receive any education, and, if so, what shall be its form and extent. The opposition of parents to compulsory education has usually one of two roots — either the desire to derive profit from the labor of children, or the apprehension that they may be perverted from their hereditary religion. Child labor, at least in factories, is an admitted evil, which requires to be reduced to a minimum. It is difficult to forbid it absolutely, because there are families which are wholly dependent upon the labor of children for support, and, if the children are forbidden to labor for hire, and support is not furnished from some other quarter, the family will perish, including the children; because children must be taught to labor, and labor in factories is not in itself a greater hardship, though it may exert by association a more degrading influence, than labor upon the farm, to which no one objects; and because, in the division of labor, there are certain processes which are better executed by children than by adults. It must be said, on the other hand, that the employment of children in factory work requires their constant presence, and thus prevents them from attendance at school, which work upon the farm does not. As to the perversion of children from their

hereditary faith, this can hardly be the case where religious tenets opposed to that faith are not taught in the public schools. Such ethical training as may be there given, is consistent with any and every form of religious belief, since all religious organizations are agreed as to the fundamental principles and the practical application of ethics. Our American public school system, therefore, with all its defects, is, upon the whole, an efficient preventive of crime.

Without entering upon a discussion of the vexed question of paternalism in government or *laissez-faire*, the State is, in a certain metaphorical and legal sense, the parent of the people; and to abandoned, neglected, dependent children it of necessity stands *in loco parentis*. This is an established legal doctrine. It must first see that parents do their duty by their children. If they fail in the discharge of that obligation, it must either force them to meet their responsibilities, or separate their children from them. This is, however, a question of great delicacy, which needs to be handled with care, both in its discussion, and in the execution of any law which authorizes such separation. Novices in the administration of charitable work for children are likely to be too easily satisfied that a home, however poverty-stricken and inferior (when judged by an ideal moral standard), is an unfit home; forgetting that there is no love like mother love, and that it may be impossible to supply any substitute for it which will prove of equal value in its influence upon the child's character and after life. There are, however, cases where the necessity of such separation is indisputable. There are many more in which children are thrown upon their

own resources at a very early age, in consequence of the death or desertion of their natural protectors and guardians. With regard to these, there can be no question that the State is under obligation to see that they are taken off the streets, removed from evil associations of every description, and properly taught and trained.

Substitutes for the natural home, in the form of institutions, are provided usually by private benevolence, often supplemented by subsidies from the public treasury. Subsidies may take the form of direct appropriations; or money may be paid, under a contract, for the care of children at a fixed price per capita. Such institutions are divisible into three groups, those which are purely educational; those which are more properly charitable, because they furnish not only tuition, but board, lodging, and clothing, with medical care if necessary; and those which are reformatory, and in a sense allied to the prison system, though not identified with it. Whatever may be their especial purpose, they are most successful in accomplishing their end, in proportion as they approximate to the actual conditions and relations of a true home. They can never be a true home, for the reason that the members of the establishment, though they lead a common life, have common occupations, and there may exist between them much mutual affection, are nevertheless not connected by ties of blood. The larger the institution, of course, the more artificial must be the regulations for its government, the more of routine there will be in the daily life of the inmates, and the less opportunity there will be for development of individual capacities and tastes. Juvenile institutions, with few exceptions, more or less

fail to fit their beneficiaries for the practical duties of life, in consequence not merely of their very organization, which imperfectly resembles that of the ordinary home at best, but of the isolation of their inmates from the life of the surrounding community. They are a poor substitute and a necessary evil. At the same time, they are indispensable, both as temporary refuges, and in some cases because no other disposition of the child, especially if he is imbecile, crippled, hopelessly ill, or congenitally depraved, is possible. They often serve a useful purpose in the transition from the street life of the gamin to that of an adopted child or an apprentice, in the training which is there given in domestic habits, and so forth.

But the retention of a child in an institution beyond the age at which an adopted home can be found for him is a wrong, against which the managers of institutions should be taught to be upon their guard. It is sometimes said that private homes of suitable character cannot be found for this class of children in sufficient number. This is probably an error, which grows out of the failure to make an earnest, honest effort to find such homes, or an excessive scrupulousness as to their character. On the other hand, the failure on the part of associations which labor for the placing out of children, such as children's aid societies, to exercise a proper care in the selection of homes and in the supervision of children who have been placed in them, is a corresponding wrong on the other side. The State which has most successfully combined the two systems, and which probably administers the combined system with the greatest efficiency and success, is the State of Michigan. It

maintains, at Coldwater, a school for dependent children, which is a model worthy of study and of imitation by all governments, in this country or abroad.

The toleration of children in penal institutions of any description is an outrage, to which no government, national, State, or municipal, should under any circumstances give its consent. It is true that there are children who, in spite of their tender years, are old in crime and more hardened than many grown men and women, possibly more hopeless. But most children who commit criminal acts and are arrested on account of them, may be said to have acted without proper discernment; they are only partially responsible, in a legal sense; certainly they have not reached a stage in the development of criminal character such as to exclude the hope of their reformation, under proper treatment and influences. Accordingly, in all parts of the civilized world, reformatory institutions for children, maintained at private or public cost, form an essential and admirable feature of the social organization. It is a source of pride to Americans, that the first governmental institution of this character ever established, so far as is known, was the New York House of Refuge, chartered in 1824, which antedated the famous French reformatory of Mettray, and the Rauhe Haus in Germany. In these institutions, from their very foundation, a controversy has been carried on by their advocates and managers, the point of which has been whether they are most successful when organized on the family or the congregate plan. By the latter is meant the collection of the entire population under a single roof, and their association with each other in common workshops, dining-rooms, school-

rooms, and playgrounds. By the family system, on the other hand, is meant their division into smaller groups, occupying separate dwellings, with separate playgrounds; these groups are founded partly upon their age and size, partly upon their criminal history and their character and conduct in the institution. The ends sought under the family plan are, first, a nearer assimilation to ordinary home life, by the diminution of the numbers brought into close personal contact; and, second, a classification which will separate the more hardened and incorrigible from those of whose reformation greater hopes are entertained. The general tendency of expert opinion in this regard seems to be in favor of the family, rather than the congregate system. The less prison-like and more homelike all the surroundings of such institutions can be made, the better. They should be for one sex exclusively. The investigations made in the last census show that too many non-criminal children are admitted to them and retained in them. Reformatory institutions are properly designed only for those who have committed some act which would be criminal in an adult. They are not meant to be refuges for neglected and abandoned children; least of all should parents be allowed to commit their offspring to them at their own pleasure and their own cost.

The remarks made as to the desirability of caring for destitute children in private homes, rather than institutions, where such care is possible, apply also to criminal children. Many are ruined, no doubt, by being committed to a reformatory and there brought into contact with corrupt associates, who might have been saved, had sentence in their case been suspended, and had they been

allowed to return to their own homes; or, if for any reason that was undesirable, placed in some private home, or in an institution of a purely charitable sort. The State of Massachusetts, in this respect, has set an example worthy of universal imitation. Under the criminal code of that State, the imprisonment of a convicted criminal is not a legal necessity. He may be sentenced merely to police surveillance. The State appoints an agent, whose duty it is to attend the trial of every juvenile offender in the courts. This agent may make an independent investigation of the facts and circumstances of each case, and report his or her conclusions privately to the judge. The trial of a child cannot take place, without the presence of this agent, who is recognized by law as the child's friend and champion. In many instances an arrangement is made, by which the case never comes to trial, but the child is dismissed and sent home with a reprimand and a few words of wise paternal counsel; or provision is made for him in some charitable institution, or he is boarded out at State expense. The same disposition may be made of him after trial. But under no circumstances is he allowed to go to prison as a convict.

The results of this system have been so excellent, that it has been extended, and is now applicable in part, to adult men and women.

(3) The third and most important form of prevention of crime is found in the police system, which, like the penitentiary system, is of purely modern origin. The possibility of converting the police force into a gigantic instrument for the collection of blackmail, the defeat of the popular will at the polls, and the fostering and pro-

motion of vice for a pecuniary or political consideration, has been recently demonstrated, in a most painful way, in our chief metropolis. How far this evil extends to other cities it is impossible to say. It is not believed to be general. The police, as a whole, are on the side of social order and security, and render an invaluable service, not only in the detection and arrest of criminals, but in the prevention of crime. In this they will be greatly aided by the system of anthropometrical measurements, invented by Dr. Bertillon, for the identification of habitual members of the criminal class, of which mention has been made in a previous chapter.

(4) If it is important to care for the young, who are liable to fall into crime, but not yet beyond redemption, it is equally important to care for ex-convicts, who, while undergoing their sentence, make professions of penitence, and who give reason to believe that they are sincere and to hope that they will be able to keep their newly formed resolutions of amendment, after they are discharged. The most terrible moment in a convict's life is not that in which the prison door closes upon him, shutting him out from the world, but that in which it opens to admit of his return to the world, having lost his character and standing among men; having suffered for months or years from the deprivation of pleasures to which he was accustomed; and having but little, if any, money in his pocket with which to meet necessary expenses. Without friends and without employment, his situation is critical in the extreme. It is almost certain that, if nothing is done for him, he will relapse into crime, partly because, when his means are exhausted, no other way is open to him by which to replenish

his purse; and partly because, although the respectable shun and avoid him, he is sure to receive an open and cordial welcome in the haunts of vice. He is, too, very liable, if he finds employment and attempts to lead an honest life, to be recognized by some prison associate and blackmailed or informed upon. The creation of a State agency, or the formation of a voluntary society, for the aid of discharged convicts, is therefore everywhere desirable, if not essential.

The question has been much debated, whether it is wise to establish homes for discharged convicts, or to aid them in some other way, namely, by finding them employment, loaning them money, furnishing them with tools, and the like. The objections to a discharged convicts' home are that it maintains, to some extent, the criminal associations of the prison; that it encourages the natural indolence of the ex-prisoner; that he is apt to remain too long in the home, and not to exert himself sufficiently on his own account. The general consensus of opinion among prison officials is therefore rather unfavorable to them, though there is no doubt that in some instances they have done a great deal of good. They are very difficult to maintain. It is also difficult to find suitable men and women, with the necessary devotion, to manage them. Under the Elmira system, there is comparatively little need for them, since, under that system, the prisoner is not discharged, no matter what his record in the reformatory may have been, until he has found, for himself, through the agency of his friends on the outside, the employment and guardianship without which a parole will not be granted him.

(5) Finally, the prevention of crime depends to a very large degree upon the education of public sentiment. Public opinion frames the laws and enforces them. Public opinion gives shape to all social institutions and regulations. Public opinion is the tribunal before which at last every man is upon trial, and from its judgment there is no escape. Public opinion, therefore, needs to be enlightened, informed, and guided, upon all questions relating to crime, its causation and prevention, and to criminals, their treatment, reformation and rehabilitation. There is an immense literature upon this subject, in all languages; but comparatively few books relating to it have been printed in America or have any extensive circulation here. The various prison societies which have been organized, notably the societies in Massachusetts, Pennsylvania, New York, and Maryland, and the National Prison Association, organized in 1870, have done much by their conferences and publications to create a healthy public opinion upon this subject. But their membership is small, and their publications have little circulation and probably few readers. An attempt has been made to arouse public attention and interest by the institution of "Prison Sunday," in August of each year, when clergymen have been requested to make it the theme of their pulpit ministrations, and they have sometimes been supplied with material for sermons suitable to the occasion, by the publication and distribution of a newspaper entitled *Prison Sunday;* but this effort has been only partially successful. The International Penitentiary Congress, which nominally meets once in five years, is upon a semi-diplomatic basis, is patronized by nearly all civil-

ized governments except our own (although it owes its origin to American initiative), has become an established institution, and exerts a wide influence for good. There are also various national prison associations, such as the French *Société des Prisons;* and one international organization, of a voluntary character, entitled The International Association of Criminalists,[1] which has started out with vigor and promises to exert a wide and growing influence in the direction of the reform of criminal jurisprudence and of penitentiary administration. The subject is beginning to attract the attention of the press, and many valuable articles have appeared in the daily and weekly newspapers and in the magazines and reviews. Several of the colleges and universities of the United States include this in the list of optional studies in their curriculum, regarding it as a branch of applied social science. The influence of this discussion is manifestly felt by the state and national legislatures, which have responded in some measure to outside pressure, and have inaugurated various reforms, which are, however, still in their infancy. Without continued and persistent agitation of the questions which form the theme of the present volume, there is danger, however, that what has been gained in this direction will be lost. Eternal vigilance is the price, not only of liberty, but of everything else worth having or preserving.

[1] "L'Union Internationale de Droit Pénal."

CHAPTER XV.

THE OUTLOOK.

And now the author and his reader must part company. We have at last arrived, after a long and, it is to be feared, a tedious journey, at the end of the route. Many dark and bloody scenes have we witnessed together; our hearts have been touched by various and dissimilar emotions. At much more that we might have seen we have not been able to cast so much as a passing glance, for want of time, or because it lay not in our direct path.

Among things omitted may be specially mentioned the ministrations of Elizabeth Fry to the female prisoners in Newgate; also the reorganization of the English prisons, so well described by Sir Edmund Du Cane, and the substitution of central for local control of the county gaols. But of these and much else nothing can here be said.

Indeed, this book is but an outline, like a map on which are laid down only the larger rivers, mountains, and towns, with no more detail than is needful to give a general notion of the country through which we have passed. Or it may be compared to a case for papers, divided into compartments and properly labelled, in which the student may find a place to stow away such bits of information as he shall find in the course of his reading and his experience of the world. For, if I have

at all interested you in the fate of the guilty, be assured that henceforth, at the most unforeseen moments and in the most unexpected places, you will stumble over tales, poems and reflections, in literature; over pictures, in art; over facts, in science; which will remind you of what you have read, and whose relation to all knowledge will be the clearer to you, for the reading. The remark may here be repeated, with which the subject was introduced to your notice, namely, that it is vitally connected with every interest and pursuit in life. Nay, more; without some degree of acquaintance with it, history, science, philosophy, and religion are but imperfectly apprehended and understood. It sheds light upon the most mysterious and baffling problems of existence. The spirit of every age is reflected and expressed in the attitude of the criminal law toward those who have violated it, in their ignorance, their weakness, or their passion.

If, then, it is desired to know what must be the future course of the incomplete evolution of criminal jurisprudence, we can at least predict that it will follow to the end the lines which have been historically traced. The germ of that which is to come is contained in what has already happened. The record already made is one to fill the lover of his kind with hope, not with despair: hope that the lesson of failure has been learned and will not be forgotten, that the true path has been found at last, and that the nations of the earth will sooner or later be induced to walk in it. The criminal is better understood than he once was; and so are our relations and obligations to him, in the discharge of which we shall the better serve ourselves and the State.

Among the reforms to be sought and labored for are these : —

The spirit of revenge, in matters political and social, which characterized the dark, lurid morning of the world's history, must be put away, and exchanged for that of sympathetic pity. With it must go the senseless fear which is the antipode of love, the only remedy for human sin and wretchedness. Fear and vengeance are passions which in turn beget each other. Let us leave the avenging of wrong to God, whose sole prerogative it is, and who can alone administer justice duly tempered with mercy. This lies at the foundation.

In proportion as the light of religion and of science dissipates the dread of crime growing to fateful and destructive proportions — a dread which betrays distrust of the providential care of infinite Goodness, Wisdom, and Power, all that is unnecessarily harsh in the enforcement of law will in time disappear. War, with its horrid front; slavery, in all its manifold forms; all cruelty and oppression; the death penalty, life sentences, corporal punishment, and the infliction of mental and moral suffering for the sake of giving pain.

It is not enough that criminal jurisprudence should be humane; it must also be intelligent. For this a profound acquaintance with human nature is requisite, and the skill to apply it, both by way of deterrence and of reformation. Neither of these ends can be obtained without pain to the wrong-doer; no more can some diseases be healed without the surgeon's knife. Law can never afford to be weak; its supremacy must be maintained, even at the cost of bloodshed. But a wise and tender surgeon never draws blood without necessity, and

then only in the hope of effecting a cure. Wisdom, in this case, is but another name for knowledge. Hence the criminal must be known, before he can be suitably treated: in his capacities, his instincts, his sentiments, his inclinations, his habits. He must be known physically, mentally, and spiritually. Above all, he must be known individually. Both his normal and his abnormal tendencies should be clearly understood, with special reference to the stimulation of the normal faculties in which he is deficient, and the repression of the abnormal tendencies which are evidently in excess. He can be judged only for what he is; not fitted to a Procrustean bed and measured by other men. That which may be done for him cannot be accomplished by mechanical processes. What he needs is growth — development from his own centre, by assimilation, under judicious observation, guidance, and restraint. His resistance must be overcome, but it is his will which needs to be gained. Until that is gained, nothing is gained. But it can be gained only by kindness, nor is severity inconsistent with kindness. He will yield to no man, except under compulsion, whom he does not feel to be his friend.

Not for an instant, however, can we admit that the larger interest of the whole community, of which the criminal is a degenerate member, should be sacrificed to his personal interest. A healthy society, like a healthy body, eliminates from itself the morbid and morbific dejecta, whose retention would imperil vitality. A sentimental interest in convicts is unnatural, and injurious alike to those in whom it originates and upon whom it terminates. We should not deceive ourselves as to a prisoner's actual character, condition, and desert, nor

deceive him as to our opinion of his conduct and motives, though we may, for his sake, withhold the expression of that opinion; and, if rightly constituted, we can never taunt him with his infirmities and his mistakes. It is necessary to regard crime as an obsession, and to distinguish between it and its victim, as, in medicine, we fight disease but not the patient. These degenerates, if they cannot be regenerated, are to be firmly, humanely secluded from such contact with their kind as will intensify their criminality and infect the innocent with it. Having secured this seclusion, our right to interfere with their personal freedom ends, except in so far as may be essential for the preservation of order and obedience to lawful regulations in the prison. It is not absolutely certain that we have a natural right to compel them to labor: if any prisoner is deprived of the privilege of useful occupation, he will beg for it, otherwise he is not sane; certainly we have not the right to work him for profit, still less for the profit of a prison contractor; and much of the corporal punishment inflicted for failure to accomplish an allotted task is outrageous cruelty, the toleration of which will be regarded by posterity with puzzled horror at the contemplation of our blind and selfish inhumanity.

To preserve the innocent from contamination, the absolute isolation of every prisoner awaiting trial is an indispensable necessity. A foul blot upon American civilization is the toleration of the association in idleness which characterizes our county jails and city lockups. The county jail system is inherently bad, and that for many reasons. These minor prisons are improperly constructed and improperly governed. It is a fatal mis-

take, to allow them to remain under the local control of county courts or county boards of commissioners. The prisoners confined in them have violated the law of the State, and are in the custody of the State: by what right does the State commit them to the hands of an inferior jurisdiction, over which it exercises directly no control, in the way of appointment or regulation? The sheriffs elected as officers of the court have rarely any special training or qualifications for the duties of a prison-keeper; and, if their other engagements make heavy demands upon their time, and the number of prisoners is sufficient to justify it, the government of the jail is entrusted to a deputy with even less adaptation to his special function than his chief. The system is not only corrupting, but wasteful in the extreme, since the average number of prisoners in an American county jail is less than five; many jails are nearly always empty. The erection of prisons is therefore needlessly multiplied, and it is customary to build an extravagantly costly residence for the sheriff, in connection with the jail. Since he has so few prisoners to care for, an extravagantly large *per diem* allowance is made to him for feeding them. In some States, this is supplemented by fees for locking and unlocking, which are the occasion of unnecessary arrests, prolonged detention of prisoners, and a good deal of actual fraud. It is impossible to furnish occupation in these minor prisons, other than the cleaning of the jail and similar petty domestic service. The majority of them are badly planned and badly built — cellars under the court-house, or if not, they are apt to be dark, foul, cold in winter, hot in summer, destitute of suitable sewerage and water-

supply, cramped, unhealthy, and so arranged that two or more prisoners occupy a common apartment. They are insecure, and escapes are frequent. Often they lack any provision for classification of prisoners, even for the separation of the sexes. In the best of them, with few exceptions, free association, at least in the corridors, was the only thought of the architects who designed them; and in some of those constructed with a view to complete isolation of the inmates, the sheriff in charge refuses to enforce it. They are nurseries of crime and of vice, plague-spots, which demand complete suppression. The system should be at once abandoned and replaced by one more rational and more responsible.

Isolation is also indicated as a desideratum, in many instances, for felons in our adult reformatories and penitentiaries, particularly at the beginning of their term of incarceration, or at a later period, when they prove stubbornly rebellious and irreclaimable.

The organization of prisons is susceptible of great improvement, especially in the medical department and in the work of the chaplain and schoolmaster. The warden of a penitentiary represents law, the physician science, and the chaplain religion. It requires all three, to exert the most complete influence over the convicts and to secure the best attainable results. These three officials should constitute a trinity, with one mind, heart, and purpose; they should work together for the attainment of a common end; their duties, rightly conceived, cannot clash; and they should be on more nearly a level, in point of dignity and authority. Where a chaplain is merely tolerated, he or the warden is unfit for his position. The physician should preferably reside in the

prison and give his entire time to the discharge of the duties of his office, which include much more than the mere prescription for the sick and attention to sanitary conditions. The physician and chaplain are the right and left arm of the warden who estimates aright the services which they are capable of rendering; it would be equally wise to abolish the quartermaster and the commissary in the organization of an army. They are or should be his confidential friends and advisers, his council, subordinate to him in rank, but personally his equals and admittedly entitled to every courtesy as such. In a country like ours, with a mixed population and no established church, the religious needs of prisoners of differing religious faiths, with diverse forms of worship, can only be supplied by the ministration of pastors of the same belief with themselves, and provision should be made for such ministration. If any clergyman not officially connected with the prison administration presumes, however, upon his privileges and interferes with the discipline or undertakes to dictate to the warden, there is but one remedy — to show him the door.

Greater attention needs to be paid to the selection, instruction, and discipline of the inferior officers and employees. They should never be appointed, retained, or discharged, for purely political reasons.

Since the aim of an ideal convict treatment is the promotion in the prisoner of the healthy growth of normal talents and propensities to the exclusion of the abnormal, the aliment necessary for such growth must be supplied in adequate amount, both for the body and the mind. For the body the requisites are food and exer-

cise: an ample and nutritious diet — starvation, for the sake of punishment, is a scientific anachronism, in this nineteenth century; and exercise which is useful, productive, easily within the prisoner's capacity, and sufficiently interesting to secure his mental attention. Here the physician can aid materially in the process of development by closely watching the effect upon each individual of his diet and occupation, and advising such changes as, in his medical judgment, will promote the end in view. His records of experiments in this direction and their results, if judiciously and faithfully kept, will prove of value to science and to sound prison discipline. The provision of food for the mind devolves usually, under the direction of the warden, upon the chaplain. To him is entrusted the oversight of the schools, the care of the library, and the direction of the public exercises in the chapel. A competent and faithful chaplain can relieve a busy and overworked warden of much care and labor, if he deserves his confidence and has it, which of course he cannot have, unless he works in subordination to his superior officer and in harmony with him.

In the choice of occupations for individuals, due regard must be paid to their personality, also to the probable effect that their assignment to a special form of labor will have upon them after their discharge, in aiding them to secure congenial and remunerative employment.

There is danger, on the part of the author, in going too deeply into details of prison discipline, and this line of remark will not be pursued farther. But these are illustrations of the spirit which it is desirable to infuse

into the management of penal institutions, and of the ways in which that spirit will manifest itself, where it is present.

This is the general direction which the improvement of our prisons must take. The amelioration of the criminal code and the amelioration of prison discipline go hand in hand, with equal step. They have the same basis and the same aim. They rest upon the conviction that the criminal is a fellow-man, whose rights cannot be violated with social impunity; that he is to be uplifted and restored, not crushed — better kill him outright, than reduce him to a state of imbecility by slow but sure degrees, exciting him to resistance and then subduing his resistance by violence. The criminal law, seeing the criminal deed, seizes the doer of it (but without pronouncing a moral judgment upon him, which it is incapable of doing), and, for the protection of society, it places him where he can do no harm, but where, if amenable to treatment, he may hope to be benefited. It does not, however, in advance of any thorough investigation into his antecedents and constitution or habits, rashly prescribe the specific remedy applicable to his case, nor the exact date at which it is to be discontinued, prior to any reasonable expectation of a cure. Having committed him to the hands of an expert in criminal therapeutics, selected by the State on the ground of his known and proved qualifications for the place to which he is appointed, and responsible to the State for the faithful and successful discharge of his responsible and delicate functions, it insists that he shall be subjected to the treatment approved by this expert, and by other experts in the same line, until, in

his or their judgment, all has been done for him that can be done. If the degeneracy apparent in him is congenital and profound, the treatment, however skilful, will end in failure. Criminals of this type are in the minority. The majority of them are susceptible of improvement under discipline, and will respond to it, if it is wisely adapted to their individual peculiarities (which must therefore be carefully studied), and if there is no relaxation of it before it has had the necessary time to accomplish the desired result. Too much must not be expected of it, nor equal benefit in all cases. It is enough, if it has the effect to put its subject in such a condition that he can live and act in the social state without serious liability to relapse into crime.

The adoption of this method of dealing with criminals by the substitution of a reformatory for a penal discipline, presupposes that the authority by which it is exercised is competent, which means a great deal. It means high moral character, earnestness, devotion, self-sacrifice, rare intelligence, insight into human nature, tact, tenacity of will, experience, patience, and hope. The head of a reformatory institution must be worthy of trust, and he must be trusted — and sustained.

As to the incorrigible, nothing of value is gained by threatening them with life-long incarceration, if they do not exercise a resolution of which they are incapable, and yield to influences to which there is nothing in them which responds. It is desirable, if the form of their criminality is dangerous to themselves or others, to hold them in custody, for the protection of society; but not otherwise. They should not be retained in the reformatory, but provision should be made for them

elsewhere. The disposition to be made of them is a separate question, with which the question of the corrigible need not be complicated. The corrigible, having undergone a sufficient term of imprisonment to satisfy the deterrent aim of the law, should then, if ready for their discharge, be released, and whether this is so, the head of the establishment is the only competent judge.

It has taken the world a long while to develop this conception of criminal law. Indeed, it is yet foreign to the thoughts of the mass of mankind. But, once lodged in the mind, it cannot be dislodged. It agrees with the teachings both of science and religion. It contradicts no principle of justice. It is humane. It solves a great number of perplexing doubts, which the old system could never satisfy. It rests upon an accurate analysis and synthesis. There can be no doubt, in the minds of those who have grasped and accepted it, of its universal adoption, so soon as it is generally understood, and whenever the average intelligence and morality of the community shall reach such a point of elevation as to supply the necessary conditions for its successful operation. It is the culmination of the experience of mankind.

One final thought. Too much use is made of the prison. Multitudes of convicts are in confinement, whose release would work no possible harm to society, and who deteriorate in prison, but would profit by free association with their kind in every-day life. They have not been wrongfully convicted, but they are needlessly held. The prison has done all for them that it can do. There are others who, having been convicted, would

have been more likely to amend their ways, if never incarcerated. Many men on the outside have committed the same acts, with no higher motives, but are respected, useful, and happy, because the criminal law was not brought to bear upon them. Those most familiar with crime, criminals, and prisons are least willing needlessly to jeopard the entire future of an occasional offender, especially in youth, by his arrest and prosecution, so long as there is any reason to believe that he can be turned from evil courses by less stringent and irrevocable means, which do not involve lifelong disgrace. It has been well said, that the prison will never fulfil its own highest purpose, until it shall have put an end to the necessity for its own existence. The abolition of the prison (but not until there is no longer any need for it) is the dream of the prison reformer. Not that he has any immediate expectation of the realization of what he trusts may prove, to some far-off generation, to have been a prophetic vision. But there are many cases in which police surveillance might perhaps be substituted for it, and that in the near future. And one reason for the adoption of the indeterminate sentence is that it seems, to the eye of faith, to be a step in the direction of this lofty ideal.

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